## United States Court of Appeals for the Second Circuit



**APPENDIX** 

CERLURIVEL.

# 761040

### **United States Court of Appeals**

For the Second Circuit.

BpgS

THE UNITED STATES OF AMERICA.

Appellee.

-against-

WILLIAM FIGUEROA and HERBERT RICKS,

Appellants.

On Appeal From The United States District Court For The Southern District Of New York

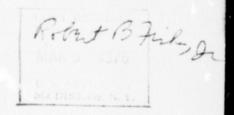
#### APPENDIX ON BEHALF OF APPELLANTS FIGUEROA AND RICKS



GOLDBERGER, FELDMAN & BREITBART

Attorneys for Appellant Figueroa 401 Broadway New York, N.Y. 10013

ROBERT A. KATZ Attorney for Appellant Ricks 233 Broadway New York, N.Y. 10007



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#### PERTINENT DOCKET ENTRIES

- U.S. v. WILLIAM FIGUEROA
- 10-10-75 Filed indictment.
- 10-20-75 Deft. (Atty. present) Pleads not guilty. Bail \$10,000. P.R.B. secured by \$1,000. cash. Case assigned to Judge Carter for all purposes. Pierce, J.
- 10-31-75 Pre trial conference held. A hearing will be set down for Nov. 13, 1975 at 9:30am in courtroom 705. Carter, J.
- 11-18-75 Filed govts. notice of readiness for trial.
- 11-24-75 Filed the following papers from the office of Mag. Jacobs: docket entries; disposition sheet; complaint; appearance bond in the amt. of \$10,000 PRB secured by \$1,000 cash.
- 11-24-75 Trial began with a jury.
- 11-25-75 Trial continued.
- 11-26-75 Trial continued & concluded. Jury verdict, Deft. GUILTY on COUNTS 1&2.DEFT. remanded in lieu of bail.-CARTER,J.
- 12-1-75 Filed Govt's Requests to Charge.
- 12-18-75 Filed affdvt of Eugene Neal Kaplan, AUSA, in opposition to Bail Reduction Motion.
- 12-16-75 Filed Consent Order to change Attorney from Ira M. Gross, ESQ., 401 Bwy., N.Y.C. to Paul A. Goldberger, Esq. 401 Broadway, NYC 10013.--Carter, J.
- 12-19-75 Filed Defts reply affdyt in reply to Govts opposition to bail reduction.
- 12-31-75 Filed transcript to record of proceedings dated Nov. 24-25-26--75.
- 12-19-75 Filed defts affdvt and notice of motion for an order setting bail pending sentence and appeal
- 1-15-76 Filed judgment and probation commitment order—the dift is hereby committed to the custody of the atty. general for imprisonment for a period of three years on count 1, three years on count 2, to run concurrently with each three years on count 2, to run concurrently with each other. Pursuant to the provisions of Title 21, U.S.Code other. Pursuant to the provisions of Title 21, U.S.Code other. Pursuant to the provisions of SPECIAL PAROLE for a Section 841, the deft is placed on SPECIAL PAROLE for a period of three years, to commence upon expiration of confinement.—CARTER, J.

1-6-76	Filed MEMO ENDORSEMENT on deft's notice of motion for bail pending appeal filed 12-12-75. MOTION DENIED SO ORDEREDCARTER, J.
19-76	Filed Defts Notice of Appeal to the U.S.C.A. for the 2nd Circuit from the judgment entered on 1-15-76.
12-31-75	Filed transcript of record of proceedings dtd Nov. 24-26-75.
2-3-76	Filed transcript of record of proceedings dtd Dec. 23-75.
2-3-76	Filed transcript of record of proceedings dtd Jan. 15, 1976.

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	75 Filed indict								
-20-7	Deft. (atty.	present) P Judge Cart	leads not guil er for all pur		Pierce.J.				
1-75	Filed defts.	affdt. ar	nd notice of m	otion for d	iscovery.hil	11			
-31-7	Nov. 13,197	Pre trial conference held. a hearing will be set down for Nov. 13,1975 at \$\$\frac{1}{3}\$ 9:30am in Rm.705. Carter, J.							
7-75	Filed govts.	Filed govts. affdt. of Thomas Fortuin re: in opposition to said defts. motion for discovery.							
18-7	Filed govts. notice of readiness for trial.  Deft. (atty. Harvey Michaelman present) withdraws ples of not guilty and pleads guilty to ct. 1. PSI ordered. Sentence adj. to Jan. 8,1975 at 9:30am in Rm.1106. Carter, J.								
	adj. to Jan.								

A5 75 CR 975 (RLC 15 UN 915 V. EXCLUDABLE DELAY IV. PROCEEDINGS (continued) DATE Filed memo end. on govts. affdt. dated Nov. 7,1975--1-20-75 Deft. having plead guilty, the motion is moot and is dismissed. So ordered, Carter, J. m/n Piled the following papers recd. in the office of Mag. Jacobs: docket entries; disposition sheet; domplaint; financial affdt/appearance sheet by: Edward Panzer of 299 Bdwy, NYC 10007 and by Michealman and Michaelman of 250 W.57St, NYC 10019 11-24-75 Filed Govt's Requests to Charge. 12-01-75 01-07-76 Filed transcript of record of proceedings, dated 11-19-75 Filed Judgment & Probation/Commitment Orders The Deft is hereby committed 01-08-75 to the controly of the 1tty Ceneral for imprisonment for a period of OND (1) YEAR, on COURT (1. Expection of sentence is suspended and the peft is placed on Probation for a period not to enced STONTON (18) MONTHS, subject to the standing probation order of this Court. On Dofts course is motion COURT #2 is DISMINGTON with the convent of the Government --- CA TER J.

(per Section It)

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110 Revices Continuation	ATTY'S. LISTING SHEET	•
ATE	PROCEEDINGS	Date Order or Judgment Notes
DEFT.	_	ATTY.
BERBERT RICKS	Robert Katz c/o Barlow, K 233 Bdwy, NYC 233-0930	atz and Barlow 10007
JEWELEAN DURR	Michelman and 250 W.57 St,N 586-1410	
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INDICTMENT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JUDGE CARTER

75 CRIM. 975

UNITED STATES OF AMERICA,

-v-

WILLIAM FIGUEROA, HERBERT RICKS, AND JEWELEAN DURR,

Defendants.

#### COUNT ONE

The Grand Jury Charges:

- 1. From on or about the 1st day of May, 1975 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, WILLIAM FIGUEROA, HERBERT RICKS, and JEWELEAN DURR, the defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.
- 2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21 and United States Code.

#### OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere: approximately 232.02 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

#### COUNT THREE

The Grand Jury further charges:

On or about the 22d day of September, 1975, in the Southern District of New York, HERBERT RICKS, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 27.83 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

[Signed] Laura L. Watson Foreman

[Signed] Faul J. Curran United States Attorney

#### CHARGE OF THE COURT

jg 2

3 Honor.

THE COURT: All right.

Bring in the jury.

(Jury present)

#### CHARGE OF THE COURT

I just wanted to place that on the record, your

(Carter, J.)

Ladies and gentlemen, we have now come to that part of the case where the evidence is in, the lawyers have presented their arguments and you are about to exercise your final role, which is to pass upon and decide the fact issues in the case.

You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, and you resolve such conflicts as there may be in the evidence, and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept the law as I state it to you in these instructions and to apply it to the facts as you find them, and the logical result of that application is your verdict in the case.

with respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel either for the Government of the defense may have said with respect to matters in evidence during the trial, in questions, in colloquy with the Court, in argument or in summation, is not to be substituted for your own recollection of the evidence.

So, too, anything the Court may have said during the trial or may refer to during the course of these instructions as to any factual matter in evidence is not to be taken in lieu of your own recollection. The case must be decided by you upon the sworn testimony of the witnesses and such exhibits as were received in evidence.

at times throughout this trial I have been called upon to make rulings on various matters of law, as, for example, when a question put to a witness was objected to or, after a question was answered, a motion was made to strike the answer, or the offer of a document was objected to.

I have sustained some objections and I have overruled others. I have received and rejected exhibits that were offered. It is essential in the performance of your duties that when anything was ordered stricken from the record or rejected, you put it out of your mind and

1 | jg 4

disregard it entirely.

Similarly, if a question was asked and an objection to that question was sustained and no answer was given, the question itself should play no part in your consideration of the case.

Please do not concern yourself at all with my reasons for any of these rulings. They are purely matters and are of no concern to you.

Conferences at the bench were conducted at the request of the attorneys. As I advised you, these conferences were solely on questions of law and, again, are of no concern to you. You are not to draw any inferences against either side because such requests for conferences were made or because they were refused.

In deciding this case, you will be called upon to consider both direct and circumstantial evidence. I would like to explain the differences between the two types of evidence.

Direct evidence is where a witness or participant testified to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses. A document can also contain direct evidence.

Circumstantial evidence is evidence of facts and

circumstances from which one may infer connected facts which reasonably flow in the common experience of mankind. Stated somewhat differently, circumstantial evidence is evidence of facts from whic- other facts that are material in the lawsuit may be found by the process of inference. Let me give you an example that I believe has nothing to do with the facts in this case.

as to whether John Doe was drinking alcoholic beverages on a particular night. A witness might take the stand and testify that he had given whiskey to John Doe and had seen him drinking it. That would be what is termed direct evident. If you believe the witness and thought he was able to report accurately, you could find from that direct evidence that John Doe had been drinking on the night in question.

On the other hand, you might have a witness testify that he had seen John Doe enter a tavern and then had seen him leave the tavern a few hours later, walking and talking in a way that suggested he was drunk. If you believe that witness and thought he was an accurate reporter, you could find on the basis of that testimony that John Doe had been drinking on the night in question. You would be using circumstantial evidence to find the existence of a

material fact in that hypothetical case.

Now let me tell you that for your purposes there is no general rule of law and no general rule of good sense that places either of these two types of evidence, direct or circumstantial, in a general way on a higher or lower or different footing from the other.

with respect to any evidence admitted into a trial record, whether it is direct or circumstantial, it is entitled to such weight and you are permitted to draw such reasonable inferences as your good judgment dictates in the particular case. The weight and effect of an item or category of evidence depend not on whether it is to be categorized as direct or circumstantial but on the concrete significance of that particular piece of evidence in its trial setting and upon its intrinsic credibility and persuasive power in the light of your observation of the witnesses, your own general experience of things, and your reasonable analysis of the whole record.

Now, there are times when different inferences may be drawn from facts, whether they are proved by direct or circumstantial evidence. The Government asks you to draw one set of inferences while the defendants ask you to draw another. It is for you to decide, and for you alone, what inferences you will draw.

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It is your function to determine the truth or falsity of the testimony of each witness. No inference as to the credibility of any witness should be drawn from the fact that upon occasion I have asked questions of a witness. My questions were only intended for clarification or to expedite matters. They were not intended to suggest any opinion as to the credibility of any witness who appeared before you.

Now, how do you determine the truth and how do you appraise the credibility of the witnesses? Well, I repeat what I told you when you were sworn in. You use your own plain, everyday common sense. The degree of credit to be given a witness should be determined by his or her demeanor here, his or her relationship to the controversy and to the parties, his or her bias or impartiality, the reasonableness of his statement, the strength or weakness of his recollection viewed in the light of all the other testimony, and the attendant circumstances in the case.

You observed the witnesses. You heard their testimony. How did they strike you? Did their answers seem frank, open, truthful, candid, or were the equivocal, deliberately confusing or evasive? Or were they somewhere in between? How did each witness impress you?

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And so you take each one and on the basis of your common sense and every day experience you determine whether or not you believe the witnesses and to what extent you believe them.

In passing upon the credibility of a witness you may also take into account whether there were material inconsistencies or contradictions within his or her own testimony, whether a witness changed his or her own testimony, the extent to which he or she has been corroborated or contradicted by other credible evidence.

The testimony of a witness may fail to conform to the facts as they occurred because that witness is intentionally telling a falsehood or because the witness did not accurately observe the events about which he testified or because his recollection of what happened is at fault or even because he has not expressed himself clearly in giving his testimony.

appear to be differing versions of the facts, you will have to determine whether the apparent discrepancy in the evidence results from an understandable error which can be reconciled so that the two stories fall together rationally.

If, however, you find this not to be appropriate or possible, you will then have to decide which version you

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will accept.

You may accept so much of the testimony of a witness as you deem true and disregard the rest. You are at liberty, if you deem it appropriate, to disbelieve the testimony in whole or in part of a witness even though it has not otherwise been contradicted or impeached.

Now, an interested witness is not necessarily unworthy of belief. The interest of a witness in the outcome of this lawsuit is a factor, however, which you may consider in determining the weight and credibility to be given that witness' testimony. It should be remembered that the testimony of the agents of the government are not entitled to any greater or lesser weight then any witness who is not an agent of the government.

heard evidence that certain witnesses made statements to law enforcement officials which were inconsistent with their testimony here. If when confronted with the earlier statement the witness affirmed the truth of the earlier statement, you may consider the statement for the truth of what it says just as you may consider the truth of the earlier statement, you may consider the truth of the earlier statement, you may consider the truth of the earlier statement, you may consider the statement only as it effects that witness' credibility, with one exception which I don't believe is applicable to this case.

If you find that any witness has wilfully testified falsely to any material fact, you may disregard all of his testimony or accept such part of it as you believe worthy of belief as it appeals to your reason or your judgment.

The fact that the government is a party here, that the prosecution is brought in the name of the United States of America, entitles it to no greater consideration than that accorded to any other party in litigation.

By the same token, it is entitled to no less consideration.

This case should be considered and decided by you as an action between persons of equal standing in the community. All persons stand equal before the law and are

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to be dealt with as equal in a court of law.

Durr, who if her testimony is to be accepted, was an accomplice in certain of the crimes charged against the defendants in this case. In the prosecution of crime, the government is frequently called upon to use witnesses who are accomplices. Often it has no choice. The government must rely upon witnesses or transactions such as they are. There is no requirement in the federal court that the testimony of an accomplice be corroborated. The government contends that Mrs. Durr's testimony is corroborated by other evidence.

However, even without such corroboration, conviction may rest upon the testimony of an accomplice if you believe it, and find it credible.

An accomplice's testimony implicating a defendant as a perpetrator of a crime is inherently suspect; for such a witness may have an important stake in the outcome of the trial. An accomplice so testifying may believe that the defendant's acquittal will vitiate expected rewards that may have been either explicitly or implicitly promised to him in return for his or her plea of guilty and his or her testimony.

Therefore, an accomplice's testimony should be viewed with caution and scrutinized with care. You must

consider whether such testimony was inspired by any motive of reward or self-interest or hostility, bias or prejudice against the defendants so that the accomplice gave false testimony or colored his testimony in these proceedings.

If you find this to be so, you ought unhesitatingly to reject it. It does not follow, however, that because a person has acknowledged participation in a crime charged against the defendants, that he is incapable of giving a true version of what he testified to in the course of the trial. As to whether his version is true or false is for you to decide.

I might also add that in some aspects of this, that the statement I have made about Miss Durr applies to Mr. Miller, who was in fact an accomplice; or so he testified; and as to Mr. Miller, let me give you one other charge:

There has been testimony before you with respect to the use by the narcotics agent of an individual commonly known as an informant or informer. That is Mr. Miller. The informer himself has testified. The law permits the use of informants provided the rights of a defendant are not violated, and therefore, whether or not you approve of the use of informers, should not enter into your deliberations.

You are required, however, to consider the

the guidelines which I have given to you earlier. You may consider whether Mr. Miller's testimony was a fabrication inspired by his own motive or self-interest or personal advantage or induced by a promise or a hope of an expectation of favorable consideration by the government in connection with charges pending against him.

You should also consider whether Mr. Miller's testimony was motivated by any hostility towards the defendants, but again, I remind you, that merely because Mr. Miller may have an interest in this case or be hostile to a defendant, does not mean that his testimony is not truthful or candid. These factors indicate that you should view his testimony with caution but you must determine the weight to be given his testimony based upon whether or not and to the extent he is to be believed.

Now, as I advised you at the start of this trial, the indictment is merely an accusation, a charge. It is not evidence or proof of a defendant's guilt; and no inference of any kind may be drawn from the indictment. The government has the burden of proving the charges against the defendant beyond a reasonable doubt. It is a burden that never shifts and remains upon the government throughout the entire trial.

The defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusation contained in the indictment. That presumption of innocence was in his favor at the start of the trial; continues in his favor throughout the trial, is in his favor even as I instruct you now. It remains in his favor during the course of your deliberations in the jury room. It is removed only if and when you are satisfied that the government has sustained its burden of proving the guilt of that defendant beyond a reasonable doubt.

what is a reasonable doubt? It is a doubt based upon reason which arises from the evidence or lack of evidence in the case. It is a doubt that a reasonable man or woman might entertain. It is not a fanciful or speculative doubt. It is not a managed doubt. It is not a doubt that a juror might conjure up in order to avoid performing an unpleasant task or duty. It is not proof to an absolute certainty. Let me repeat, it is a reasonable doubt, it is a doubt that appeals to your reason, to your judgment, your common understanding and your common sense; a doubt that would cause you to hesitate to act in matters of importance in your daily lives.

On the other hand, the government does not have to prove the guilt of a defendant beyond all possible doubt

or to an absolute certainty. If that were the rule few people however guilty they might be would ever be convicted.

If when you consider the evidence in this case you have a reasonable doubt that the government has proved any element of the crime charged, then you must return a verdict of acquittal. You may not return a guilty verdict simply because you feel that it is more likely than not that the defendant committed the crime charged.

A guilty verdict is only appropriate if each and every one of you is satisfied that the defendant's guilt has been proved beyond a reasonable doubt.

The indictment in this case contains three counts. Each of those counts charges a separate offense or crime. It is your obligation to consider separately each of the individual charges or counts of the indictment and to decide whether as to each count the government has or has not sustained its burden of proving beyond a reasonable doubt the guilt of the defendant charged in that particular count.

The indictment names three defendants. Only two of these defendants are on trial here beofre you. They are William Figueroa and Herbert Ricks.

In determining the guilt of the defendants, you

must bear in mind that guilt is personal. The guilt or innocence of the defendants on trial before you must be determined separately with respect to each of them solely on the evidence presented or the lack of evidence.

Durr is not on trial here. Evidence has been introduced that Miss Durr entered a plea of guilty to one or more of the charges in the indictment. Her plea was a personal statement of guilt. It is not an indication that the other defendants on trial are guilty; and you are not to consider her plea as evidence against any defendant on trial.

Let me now turn to the indictment in this case; and the indictment charges in three counts that the defendants violated the federal narcotics laws. Let me read Count 1:

"The grand jury charges, paragraph 1, that from on or about the first day of May, 1975, and continuing thereafter, up to and including the date of the filing of this indictment," which I believe was October 10th, "in the Southern District of New York, William Figueroa, Herbert Ricks, and Jewelean Durr, the defendants, and others to the grand jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 312, 841(a)(1) and

841 (b) (1) of Title 21, United States Code."

Paragraph 2:

"It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and Schedule II narcotic druge controlled substances, the exact amount thereafter being to the grand jury unknown in violation of Section 812, 841(a)(1) and 841(b)(1) of Title 21, United States Code."

The charge in Count 1 relates to a violation of the federal narcotics law, Section 812, 841 and 846 of Title 21, United States Code. In pertinent part, Section 841 provides that "It shall be unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a drug controlled substance."

Section 812 sets forth controlled substances in various schedules. Schedule II of Section 12 lists cocaine as a controlled substance.

Section 846 makes it a crime to conspire to commit certain offenses including the offense defined in Section 841.

A conspiracy to commit a crime is an entirely separate and distinct offense from the substantive crime, which is the object of the conspiracy.

In order to find a defendant guilty of conspiracy, there is no need to prove that the substantive crime which is the object of the conspiracy has been committed. In order to find a defendant guilty of a conspiracy as charged in the indictment, you must be satisfied beyond a reasonable doubt each of the following elements:

First, that at some time between May 1, 1975 and October 10, 1975, the conspiracy charged in the indictment existed.

Second, that while the conspiracy was still in existence, the defendant whose guilt or innocence you are considering knowingly and wilfully associated himself with the conspiracy with knowledge of its alleged criminal purpose.

Third, that while the conspiracy was still in existence, one of the conspirators, not necessarily the defendant you are considering, performed at least one of the overt acts set forth in this indictment which I will read later, and that such act was committed in furtherance of the conspiracy.

If the government fails to establish each of these three elements beyond a reasonable doubt as to the defendant you are considering, you must acquit as to the

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charge in Count 1.

If the government succeeds in satisfying this burden as to a particular defendant, you must convict that defendant on that count.

As I have informed you, the first of the elements which you must find the government has proved beyond a reasonable doubt is that the conspiracy charged in the indictment existed. First I want to discuss with you what the term conspiracy means, because that term is used here in a legal context and therefore has a somewhat different meaning than it has when it is used colloquially.

What is a conspiracy? A conspiracy is a combination or agreement of two or more persons to accomplish a criminal or unlawful purpose. The gist of the crime of constracy is the unlawful combination or agreement to violate the law. Whether or not the conspirators finally accomplish what it is alleged they conspired to do, is immaterial. That is to say, the government is not obliged to prove that purpose of the conspirators was attained. It has also been established that a conspiracy is a partner= ship in crime in which each member becomes the agent of every other member.

ment is not required to show that the alleged conspirators

sat around a table and entered into a solemn pact orally or in writing stating that they had formed a conspiracy to violate the law and setting forth the details of their plans. It is sufficient if two or more persons in any manner through any contrivance impliedly or tacitly come to a common understanding to violate the law.

Express language or specific words are not required to indicate assent to or attachment to a conspiracy.

on the other hand, mere similarity of conduct among various persons and the act that they may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy.

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If upon the consideration of all the evidence, direct and circumstantial, testimonial and documentary, you find beyond a reasonable doubt, that the mind of at least two of the alleged conspirators met in an understanding way and that they agreed, as I have e ained the agreement to you, to work together in furtherance of an unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy is satisfied.

If you find that a conspiracy existed beyond a reasonable doubt, then you must consider the second element of the conspiracy count, that is, whether the government has established beyond a reasonable doubt that the defendant whose guilt or innocence you are considering knowingly and wilfully became a participan in the conspiracy with knowledge of its alleged criminal purpose.

You may not assume that a defendant joins a conspiracy simply because you are convinced that he knew or was associated with or had other dealings with the people who conspired to violate the law.

I charge you that mere association, even close and repeated association, with some other alleged member of the conspiracy is not sufficient in and of itself to support a finding that a defendant was a member of the alleged conspiracy.

In addition, I instruct you that none of the following is sufficient in and of itself to support a finding that a defendant was a member of the alleged conspiracy: mere attendance at a meeting with co-conspirators mere presence at the scene of the crime; or mere knowledge of the conspirators' actions or objectives.

The mere fact that two people are on trial together cannot be considered in any way as indicating that they participated in a conspiracy to violate the law.

Now, to conclude that a defendant was a member of a conspiracy, you must find that he knew the unlawful purpose of the alleged conspiracy, and that knowing the purpose he intentionally joined in the endeavor and that he had an interest in making it succeed.

each conspirator was fully informed as to the details or full scope of the conspiracy or participated in every aspect of the conspiracy. A person becomes a member of a conspiracy by associating himself with a common plan or scheme, knowing the central aim or principal purpose of that common plan or scheme and intending to bring about its success.

In other words, to find a defendant guilty of a conspiracy count, you must find beyond a reasonable doubt that the defendant acted knowingly and wilfully. Specifically

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you must find that the defendant knowingly and wilfully became a participant in the conspiracy with knowledge of its unlawful purpose and intending to bring about its success.

Knowledge and wilful intent exits in the mind.

Since it is not possible to look into a man's mind to see

what went on, the only way you have of arriving at a

decision on these questions is for you to take into consider
ation all the facts and circumstances shown by all the

evidence, including the exhibits, and to determine from all

such facts and circumstances whether the requisite know
ledge, wilfulness and intent were present at the time in

question.

An act is wilful if it is done knowingly, deliberately and with an evil purpose. An act is not done wilfully if it is done as a result of a mistake, carelessness, lack of an evil motive or purpose, or for some other innocent reason.

If you find that a conspiracy exited, then in considering the second element, whether or not a particular defendant was a member of the conspiracy, you may rely not only on his own statement, but on the statement and declaration of the other alleged co-conspirator.

Moreover, if you find that a conspiracy existed, then any act or declaration made during the conspiracy or in

furtherance of it by a person found by you to have been a member of the conspiracy may be considered against the defendant whom you may find was also a member, even though such act or declaration was made in the absence and without the knowledge of that defendant.

Conversely, such action and declarations of a conspirator which were made before the existence or after the termination of the conspiracy, may be considered only against the person who made them.

Now, we come to the third element that you must consider as to Count 1.

If you found that the alleged conspiracy existed and that a defendant was a member of it, then you must consider the overt acts requirement.

The defense of conspiracy is complete when the unlawful agreement is made and when any single overt act is done by one of the alleged conspirators in furtherance of the conspiracy. By the term "overt act" we mean an act committed in an effort to accomplish some object or purpose of the conspiracy. The overt act in this sense need not be a crime in itself. It must, however, be an act which follows from the conspiracy and is directed toward accomplishment of the criminal purpose of the conspiracy.

I will now read you the overt acts charged in the

indictment. The indictment charges that:

"In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

- "1. On or about September 22, 1975, defendants
  Herbert Ricks, Jewelean Durr, drove to Martell's Bar on
  Third Avenue and 83rd Street, New York, New York.
- "2. On or about September 22, 1975, Defendant William Figueroa and Herbert Ricks met at McDonald's Restaurant in the vicinity of Pennsylvania Avenue and Linden Boulevard, Brooklyn, New York.
- "3. On or about September 22, 1975, defendants
  Herbert Ricks and Jewelean Durr drove in a black Cadillac
  to the Skyline Motor Inn in the vicinity of 10th Avenue and
  50th Street, New York, New York.
- "4. On or about September 22, 1975, defendant William Figueroa drove to the Skyline Motor Inn.
- "5. On or about September 22, 1975, defendants
  Herbert Ricks and Jewelean Durr transported approximately
  232.02 grams of cocaine to Room 246 of the Skyline Motor
  Inn.
- "6. On or about September 22, 1975, defendant
  Herbert Ricks placed approximately 232.02 grams of cocaine
  on a dresser inside Room 246 of the Skyline Motor Inn."

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You need only find beyond a reasonable doubt that any one and not all of these acts were committed and that it was committed during and in furtherance of the conspiracy.

In addition, the government must show that at least one overt act was committed in the Southern District of New York.

I charge you that the Southern District of New York includes the borough of Manhattan.

Now, if you find beyond a reasonable doubt that a conspiracy existed as charged in the indictment and that during the existence of the conspiracy at least one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object of the conspiracy, proof of the conspiracy offense is then complete. It is complete as to that defendant found by you beyond a reasonable doubt to have been knowingly and wilfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators committed the overt act.

While the indictment charges in Count 1 that the conspiracy began on or about May 1, 1975, and continued until the day of its filing, October 10, 1975, it is not essential that the government prove that the conspiracy

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started and ended on or about those specific dates. It is sufficient if you find that in fact a conspiracy was formed and existed for some substantial time within the period set forth in the indictment and that at least one overt act was committed in furtherance thereof in that period.

Now, let me read to you Counts 2 and 3 of the indictment. Count 2 reads:

"On or about the 22nd day of September, 1975, in the Southern District of New York, William Figueroa, Herbert Ricks and Jewelean Durr, the defendants, unlawfully, intentionally and knowingly did possess with the intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 232.02 grams of cocaine."

Count 3 reads;

"On or about the 22nd day of September, 1975, in the Southern District of New York, Herbert Ricks, the defendant, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 27.83 grams of cocaine."

The applicable statute is the one I read you in connection with Count 1, namely Section 841 of Title 21 of the United States Code. Once again, let me repeat to you the pertinent parts of 841:

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"It shall be unlawful for any person knowingly or intentionally to possess with the intent to distribute a narcotic drug controlled substance."

In other words, to return a verdict of guilty

for the crime charged in the second and third counts of the

indictment, you must find three elements to have been

proved beyond a reasonable doubt. First, you must find beyond

a reasonable doubt that on or about the 22nd day of September,

1975, the defendant whose guilt or innocence you are

considering possessed with the intent to distribute a

narcotic drug controlled substance.

Second, you must also find beyond a reasonable doubt that the substance which was possessed was in part a Schedule II narcotic drug controlled substance.

As I indicated earlier, cocaine is a Schedule II narcotic drug controlled substance. Therefore, if you find beyond a reasonable doubt that the government has proved by the testimony of the chemist that Exhibit 9 is cocaine, this element is satisfied as to Count 3; and if you find that Exhibits 12, 14 and 15 constitute cocaine, this element is satisfied as to Count 2.

I might add that there does not appear to be any dispute as to the elements in the exhibits are cocaine, but you must still find it to be proved beyond a reasonable

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2 doubt.

Finally, you must find beyond a reasonable doubt that the defendants you are considering committed the act of possession with intent to distribute unlawfully, wilfully, intentionally and knowingly.

You will note that in describing these elements

I used the phrase "possess with the intent to distribute."

Now, what does this phrase mean? The word

"distribute" means to transfer or deliver other than by

administering or dispensing the narcotic drug controlled

substance. The word "possess" as used in the phrase

"possess with the intent to distribute" has its every day

common meaning, that is, to have something within one's

control. Someone with physical custody of an item possesses

it within the meaning of this definition.

You must find beyond a reasonable doubt that the defendant was aware of the presence of the substance he was charged with possessing and knew it was a controlled drug.

As to the third element, an act is done knowingly if it is done voluntarily and purposefully and not because of mistake, inadvertance or other innocent reason. An act is wilful if it is done knowingly, deliberately and with an evil purpose. An act is not done wilfully if it is done as

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a result of a mistake, carelessness, lack of evil purpose or for some other innocent reason.

Now, it is not necessary for you to find that a defendant knew he was breaking a particular law. And whether or not an act is knowing or wilful has nothing to do with a defendant's personal or private reasons for committing the act, so long as the act was done with an evil purpose.

Knowledge, wilfulness and intent exists in the mind. And, again, since it is not possible for you to look into a man's mind to see what went on, the only way you have of arriving at a decision on these questions is to take into consideration all the facts and circumstances and to determine from all such facts and circumstances whether the requisite knowledge, wilfulness and intent were present at the time in question.

Now, with respect to Count 2, it is not necessary for the government to show that a particular defendant physically committed the crime himself. Section 2 of Title 18, of the United States Code provides as follows:

"Whoever commits an offense against the United States, or aides, abets, counsels, commands induces or procures its commission, is punishable as a principal."

Thus, a person who aids and abets another to

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commit an offense is just as guilty of that offense as he would be had he committed it himself.

Before you can conclude that a person aided and abetted, you must first find that the substantive crime charged in this case, possession with intent to distribute a controlled substance, was in fact committed.

Secondly, you must determine that the defendant in some way associated himself with the criminal venture and that he participate in it as something he wished to bring about, and that by his actions he tried to make the crime succeed.

You must find more than the defendant's mere presence during or knowledge of an offense. The one who aids and abets another in the commission of a crime is equally guilty with the person who actually and physically commits it. Accordingly, you may find one defendant guilty of the offense charged in Count 2 if you find beyond a reasonable doubt that the other named defendant committed the offense with which they are charged in that count and that the first defendant aided and abetted him.

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Now as you recall, Mrs. Durr testified that she handled narcotic transactions for Mr. Ricks and Mr. Figueroa on at least two occasions prior to the events described in the indictment:

As I instructed you when that testiony was adduced, evidence that a defendant may have committed an act at some other time which is similar to the act here charged may not be considered by you in determining whether the accused committed any act now charged in the indictment, nor may evidence of an alleged earlier simliar act be considered for any other purpose whatsoever, unless you first find that the evidence in the case standing alone establishes beyond a reasonable doubt that the accused did the particular act charged in the indictment in this case.

However, if you do find beyond a reasonable doubt, based solely on the evidence other than prior similar acts, that the defendant you are considering did the acts charged in the indictment in this case, then you may consider evidence as to prior similar acts in determining the state of mind or intent with which the accused did the act charged here. That is to say, if prior similar acts have been established by the government, then you may, but you are not obliged to, draw the inference that in doing the acts

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charged in this case, the accused acted knowingly and intentionally and not because of mistake or accident or

other innocent reason.

Now, Mr. Ricks has not taken the stand to testify. As I told you before, the government has the burden of proving the charges against each defendant beyond a reasonable doubt. A defendant does not have to prove his innocence. A defendant has the right to remain silent. He does not have to testify or present any evidence in his behal and you may not draw any inference or conclusion or form any prejudice because the defendant did not testify or present evidence.

On the other hand, the law permits a defendant to testify in his own behalf if he wishes to do so. Mr. Figueroa has elected to testify. The testimony of a defendant must be considered by you as you would the testimony of any other witness. You must determine the credibility of a defendant who testifies, and in so doing, you must consider the deep personal interest which every defendant has in the outcome of his case.

Indeed, it is fair to say that any defendant has the greatest stake in the outcome. A defendant's interest in the result of his trial is of a character possessed by no other witness. That interest requires that you receive such to timony with caution and subject it to

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the utmost careful examination.

However, it by no means follows that simply because a person has a vital interest in the end result that he is not capable of telling a truthful, candid and straightforward story. It is for you to decide to what extent, if at all, Mr. Figueroa's interest has affected or colored his testimony.

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon a defendant if he is convicted to influence your verdict in any way or in any sense to enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence and the evidence alone, and you must not be influenced by any assumptions, conjecture, or sympathy or any inference not warranted by the facts.

that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal: but on the other hand, if you should find that the law has been violated as

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charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

I would like to point out to you that you should not enter the jury room with any preconceived pride of opinion. You should not be unwilling to be convinced by intelligent argument with your fellow jurors. Each juror has to answer to his or her own conscience and each has to decide this case for himself or herself, but in so doing, you should be willing to consider the views of the other jurors and to talk things out and try your best to reach a unanimous agreement.

Your verdict must be one with which each juror agrees. If during your deliberations you deem it necessary to have a copy of the indictment, desire any of the exhibits, they will be sent in to you upon request. If you wish to have portions of the testimony read or wish to hear the tapes again, or the Court's charge re-read, that will be done.

Finally, let me say that every criminal case is important. It is important to the government and it is important to the defendants. It is your obligation to decide the case on the evidence and the law as I have charged it to you; and I know give you the case with the assurance that you will do just that.

Now, the procedure now ladies and gentlemen, is for

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me to confer in the robing room with counsel to determine whether I have omitted something or to allow them to make objections. We will be right back.

(In the robing room .)

THE COURT: All right, I will take Mr. Gross first, your objections.

MR. GROSS: I thought it was a fair charge, your Honor. I have no exceptions.

MR. KATZ: The exceptions that I have already placed on the record and the 17A request that I gave you that you denied, your Honor. I have no further exceptions.

THE COURT: All right.

MR. KAPLAN: Your Honor, I don't believe you instructed the jury on constructive possession. That was in my requests. I think you had granted that earlier.

THE COURT: Constructive possession? I told you I didn't think it was necessary.

MR. KAPLAN: Also, your Honor did not instruct the jury on false exculpatory statements.

THE COURT: All right, I certainly didn't. I think I have covered that in terms of statements that he signed that you showed him. That is covered. That is true, I didn't make that.

What else do you have on your mind, Mr. Virella?

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MR. VIRELLA: Yes, your Honor.

It's faster just to tell me.

give to Mr. Figueroa.

I think that as to the charge to the jury with respect to the prior similar acts, Miss Durr testified to an occasion when she began to receive cocaine from Mr. Ricks. At that time your Honor gave an instruction to the jury concerning the purpose of that testimony. The following day she testified as to receiving money from Mr. Ricks to

THE COURT: Two occasions?

MR. VIRELLA: On two occasions, right.

THE COURT: Both prior to September.

MR. VIRELLA: Yes, your Honor, and I believe that only one of those would be used against Mr. Ricks, and not both.

THE COURT: Both. Her testimony was that she got the money from Mr. Ricks and Mr. Figueroa came by, left the money on the table or in the dresser, she gave it to him in both instances for Mr. Ricks and I will stand on it.

Mr. Ricks gave her the money, she came by one time in '74, another time in June. That is her testimony.

MR. VIRELLA: It was June, '75, your Honor.

THE COURT: One time in '74 and in June '75.

That's right.

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MR. VIRELLA: June '75, your Honor, is within the conspiracy.

MR. KAPLAN: June 1975 is within the period of the conspiracy which the government has been alleging.

THE COURT: That's true, but, that's right, then I think I said two. All right, I will correct that. I said two prior similar acts when as a matter of fact there is only one. The other one that she testified to is part of the conspiracy, so I don't think that hurts, but I will tell them. I will correct it right now.

> MR. KAPLAN: Thank you, your Honor. (In open court.)

THE COURT: It has been brought to my attention in instructing you on prior similar acts I indicated that Miss Durr testified as to two prior similar acts in handling a transaction between Mr. Ricks and Mr. Figueroa; but the fact is that she testified, my recollection -- your recollection is the recollection, of course, that counts, but she testified as to an act that occured in 1974 and she testified as to another act that occurred when she handled a transaction in June of 1975, which was in the time frame of the conspiracy charged in the indictment.

> (The alternate juror; were excused.) (A United States mar shal was duly sworn.)

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

STIPULATION

-against-

Docket No. 761040

HERBERT RICKS,

75 Cr. 975

Appellant.

It is hereby stipulated between the attoranys for the respective parties that the following exhibits which were marked Court Exhibits in the trial before the Honorable Robert L. Carter may be transmitted by the clerk of the United States District Court of the Southern District of New York is deemed part of the original trial record and may be included in the appendix of any party:

Court Exhibit 1- Letter dated, November 21, 1975

Court Exhibit 2- Trial motion by Defendant Ricks

Court Exhibit 3- Trial motion by Defendant Ricks

Court Exhibit 4- Trial motion by Defendant Ricks

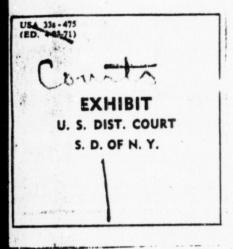
Exhibit 3502- A complaint in United State of America against John Miller

Exhibit 3507- Affidavit on Jewelean Durr, sworn to on the 30th day of October, 1975

Exhibit 3508- A transcript of plea of Jewelean Durr

Dated: New York, New York March 2, 1976

The Assistant United States Attorney
ъу
Eugené N. Kaplan
BARLOW, KATZ & BARLOW Attorneys for Herbert Ricks
by
Robert A. Katz
GOLDBERGER, FELDMAN & BREITBART Attorneys for Defendant W. Figueroa
ъу
Jeffrey Weisenfeld



SOUTHERN DISTRICT OF NEW YORK OMF ST. ANDREW'S PLAZA CAN ARREST ANDREW'S PLAZA

November 21, 1975

Ira M. Gross, Esq. 401 Broadway New York, New York 10007

Robert A. Katz, Esq. Barlow, Katz & Barlow 233 Broadway New York, New York 10007

> Re: United States v. Figueroa & Ricks 75 Cr. 975

## Gentlemen:

Please be advised that during the trial of this case the Government intends to offer proof of prior dealings by Ricks and Figueroa in cocaine during 1973 to 1975, which proof is in the nature of prior similar acts to show the background of the conspiracy and the defendants' motives as to those charged in the indictment.

Please be further advised with regard to the June 1975 transaction to which reference was made in my oral discussions with you (Mr. Gross on November 18,1975 and Mr. Katz on November 19, 1975) and which the Government intends to offer proof as an overt act in furtherance of the Ira M. Gross, Tag 2 November 21, 1975 Robert A. Katz, Esq.

conspiracy charged, said transaction took place during the first week of June, 1975 at the Saw Mill River Motel on Valley Avenue, Elmsford, New York and involved the sale of 8 ounces of cocaine to John Miller for \$10,000. The Government intends to prove said act with regard to both of the defendants on trial.

Very truly yours,

THOMAS J. CANILL United States Attorney

Assistant United States Attorney Telephone: (212) 791-0065

CC: Hon Robert L. Carter United States District Judge the veniene on the grounds it is not representative of the population of large of this Judicial district

Moht & Ghaf

11/24/75

4,5 v Rills

Defractiont Bicks now moves this lount for a weith shappy of a summer junon and for a mistrial on the grounds that the 4.5. Attenney made statements as to the acts allegral in his Mis 21/975 letter Knowing full well that the Count would make on the admissiphility of the statements and changes contained in the Nov 21st Irlyn dunlas the cogns & of the Trial.

In such closumstance the 4.5. Attorneys statement was highly one sudicid Count Exhibit 4

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Italians chiminal acts from May 1, 1975

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Bicks now mores that the Cou

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Form USA-33s-539 p.1 - COMPLAINT (Conspiracy to Distribute Narcotic Rev. 5-27-72

ARB:ik

Approved: ALLEN R. BENTLEY Assistant United States Attorney

HONORABLE GERARD L. GOETTEL Before: United States Magistrate, Southern District of New York.

UNITED STATES OF AMERICA

COMPLAINT

MARVIN J. ZAGORIA, MARK WINDER, BARRY SINGER, OLIVER JANUS, and JOHN MILLER,

Violation of : 21 U.S.C. §§ 812, 841(a)(1), 841(b)(1)

and 846.

Defendant s.

SOUTHERN DISTRICT OF NEW YORK, ss.:

, being duly sworn, THOMAS J. DOLAN deposes and says that he is a Special Agent with the Drug Enforcement Administration

and alleges ard charges as follows:

1. From on or about the 1st day of May, 1975 and continuously thereafter up to and including the date of the filing of this complaint, in the Southern District of New York, MARVIN J. ZAGORIA, MARK WINDER, BARRY SINGER, OLIVER JANUS and JOHN MILLER,

the defendants and others unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812,841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I XXXXX narcotic drug controlled substances the exact amount thereof being unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

## OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof the defendants committed the following overt acts, among others, in the Southern District of New York and elsewhere:

- 1. On or about October 16, 1975, at 235 Peachtree St., N.E., Atlanta, Georgia, the defendant MARVIN J. ZAGORIA handed to the defendant JOHN MILLER approximately \$8,000.00.
- 2. On or about October 16, 1975, at 235
  Peachtree St., Atlanta, Georgia, the defendant MARVIN J.
  ZAGORIA handed to a confidential informant approximately
  \$50.00 and a one-way plane ticket from Atlanta, Georgia
  to New York, New York.
- 3. On or about October 16, 1975, the defendant JOHN MILLER met with a confidential informant at LaGuardia Airport.
- 4. On or about October 17, 1975, in New York, New York, the defendants MARK WINDER, BARRY SINGER, and OLIVER JANUS sold approximately seven ounces of cocaine to the defendant JOHN MILLER for \$10,000.00.
- 5. On or about October 17, 1975, at 42nd Street and Second Avenue, New York, New York, the defendant JOHN MILLER possessed approximately one pound of cocaine.
- 6. On or about October 17 and 18, 1975, the defendants MARK WINDER, BARRY SINGER and OLIVER JANUS possessed approximately twelve ounces of cocaine.
- 7. On or about October 17 and 18, 1975, the defendant JOHN MILLER placed telephone calls from New York, New York to, and had conversations with, MARVIN J. ZAGORIA, in Atlanta, Georgia.

The sources of deponent's information and the grounds of his belief are investigations conducted by him in the course of his official duties, including:

1. Statements by a confidential informant to the effect that MARVIN J. ZAGOPIA had provided funds to JOHN MILLER so that MILLER could pure se cocaine in New York City, which cocaine MILLER was to transfer to the confidential informant for distribution in New York City.

:ik .PLAINT p.4

WHEREFORE, deponent prays that a warrant may issue for the apprehension of the above-named defendants and that they may be arrested and imprisoned or bailed, as the case may be.

THOMAS J. DOLAN
Special Agent
Drug Enforcement Administration

Sworn to before me this 18th day of October, 1975

UNITED S	TATES	DIST	TRI	CI CO	THUC
SOUTHERN	DIST	RICT	Ol:	NEW	YOR

AFFIDAVIT

UNITED STATES OF AMERICA,

-against-

WILLIAM FIGUEROA, HERBERT RICKS, and JEWELEAN DURR,

Defendants.

STATE OF NEW YORK )
: SS.:
COUNTY OF NEW YORK)

JEWELEAN DURR, being duly sworn, deposes and says:

That I am one of the defendants herein and make this affidavit in support of the motions for (1) discovery and inspection (2) a bill of particulars (3) severance (4) dismissal of the indictment and (5) suppression of the admissions or confessions.

With respect to all of the motions, with the exception of that for suppression, my attorney informs me that the same are based in law and are necessary for him to prepare an adequate defense for me, should the matter go to trial.

With respect to the suppression of admissions or confessions, I would respectfully submit to this Court that I have never had any previous involvement with the law. On the day of my arrest, I was in the company of the other two defendants, was shocked, afraid and confused with respect to the happenings.

The arresting officers told me that I could go home that evening if I made certain statements to them and that should I have exercised my rights to remain silent and have counsel present, that I would have to go to jail.

Because I believed that the officers meant what they said; that I would not be charged with any crime, I made a statement to them, and I am now informed by my attorney that they are going to use that statement against me, should I go to trial on this matter.

On the night I was arrested. I believed that I in no way joined in the commission of any crime and as of this writing I still believe I have not committed any crime. Therefore, when the arresting officers asked me to make a statement before they would let me go home, I believed that all they wanted was a statement and that I was in fact not going to be charged with any crime.

Thus, any statement I made to the arresting officers was not made as the result of a knowing and intentional waiver of my rights against self-incrimination and I respectfully request that the Court order a hearing with respect to the suppression of such statement.

WHEREPORE, it is respectfully prayed that the instant motions be in all respects granted, together with such other and further relief as the Court may deem just and proper under the circumstances.

JEWELEAN DURR

Sworn to before me this

30th day of October, 1975.

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(Case called.)

MR. KAPLAN: The government is ready.

MR. MICHAELMAN: The defendant is ready.

THE COURT: All right.

MR. MICHAELMAN: May it please the Court, the defendant offers to withdraw her plea of not guilty heretofore entered and offers to plead guilty to the first count of the indictment to cover the entire indictment.

## BY THE COURT:

All right, Ms. Durr, you heard what Mr. Michaelman, your attorney, has said.

Has he expressed your wishes?

A Yes.

> Q Speak up.

A Yes.

> Q How old are you?

26. Λ

You are already 26? Q

Yes. A

When were you 26? 0

February 6th. Λ

What is the extent of your education? 0

High school.

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Are you in good physical health? Are you, as far as you know, in good mental Have you ever been hospitalized or subjected to any psychiatric treatment for narcotic addiction? Q You are clear headed and of sound mind and body at the present time and you know what is going on, And you are pleading guilty to Count 1 of the indictment, changing your plea of not guilty not because of any promises made by your counsel or threats by the You are doing that of your own free will? And knowing the full consequences or possible consequences the plea? Yes.

I have to canvaccivith you its consequences so I can be

To be sure you understand what this plea means

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sure you understand.

You know that if you plead guilty that you are entitled to a speedy trial on the charge?

A Yes.

Q You know that if you went to trial that the government would have to prove your guilt to the satisfaction of the jury of 12 beyond a reasonable doubt, you know that, don't you?

A Yes.

Q And you know that if you went to trial your counsel or you through your counsel would be able to cross examine and confront any witnesses that the government produced against you?

A Yes.

Q And you know that by pleading guilty you forego that?

A Yes.

Q With that knowledge are you still desirous of pleading guilty?

A Year

Q You also know that you are subject to 15

years imprisonment and a three year special parole after

your release by pleading quilty to this count, do you

understand that?

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Yes.

You also know that it is unfortunate for you that you passed your 26th birthday and that you are not subject to being treated as a youthful offender, did your counsel tell you that?

. A Yes.

With knowledge of that do you still persist in your desire to plead quilty?

Yes.

One thing more, I am not required to accept your plea. I can only accept your plea if I am convinced that you are in fact guilty of what you are pleading to, do you understand that?

A Yes.

Therefore, I would like -- your counsel has Count 1 before you -- for you to tell me what it is that you did on roughly the 1st of May 1975 until the time that the indictment was handed down as alleged in Count 1 of the indictment so I will know that you are in fact guilty to what you are pleading to.

Just tell me in your own words what it is that you did.

On September 22nd of this year at 3 p.m. I and Mr. Ricks met Mr. Miller at a bar in the city on --

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I forget the address, 83rd Street. Everyone sat down and they talked about making a deal, a sale.

Of narcotics?

Yes.

Cocaine?

Yes. So Mr. Ricks and Mr. Miller mostly talked. I didn't say anything except for hello and after their discussion they left. I went back home, Mr. Ricks drove me home and he dropped me off and left.

Then he came back and said that we were going to the city at 9 o'clock. We were leaving at 9 so he picked me up and we came to the Skyline Motor Inn where we met Mr. Miller and a young lady named Mrs. Kamal and after Mr. Ricks gave him the package and they opened it that is when the FBI busted in.

Other than the fact that you were there and listened to the conversation, what part did you play in that?

I was there with him. I had a bag of lactose, an empty cellophane bag that Mr. Ricks had handed me to throw away but I didn't throw it away and when we were taken to the FBI building Mr. Campbell got the bag then.

Did you, at the time that you and Mr. Ricks were talking -- and I gather Mr. Miller was an agent -- EDITOR'S NOTE

when obtained, a corrected fiche will be forwarded to you.

that you were talking to Mr. Miller did you know that they were talking about narcotics and cocaine?

A Yes.

Q Did you know that Mr. Ricks was dealing in narcotics and cocaine?

A Yes.

Q Were you helping him to deal in narcotics and cocaine?

A No. I wasn't making and I did not make any sales or anything.

of that statement I can accept the plea. Her testimony is all she did was stand by and didn't participate in it. For her to know that he did it and not participate in it doesn't make her a member of any conspiracy.

MR. KAPLAN: In June 1975, which is a period within the conspiracy, Ms. Durr went with Ricks to a motel in the Bronx. There was a sale of narcotics.

Ms. Durr received \$400 from the proceeds of that sale and under date in question, the 22nd of September, Mr. Ricks handed Ms. Durr the cocaine in the automobile and when they got to the Skyline the cocaine was removed from her pocketbook, I believe, and given over to Agent Campbell.

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Q What about that?

It did happen in June that I did go to meet Mr. Miller again with Mr. Ricks and I did receive \$400 but when we got to the hotel I did not have the cocaine in my bag. Mr. Ricks had it on him.

Q The only thing I have to raise with you is that you knew what Mr. Ricks was doing and you received \$400 out of the proceeds of the sale of cocaine?

In June, yes.

Q You realized that you received money -did you understand that the money he gave you came from the sale of cocaine?

A Yes, I did know where the money came from.

Q When he gave you that plastic bag to get rid of did you know it was cocaine?

A He told me it was lactose and told me to put it in the garbage but when we got to the hotel I didn't. I still had it on me.

Q In any event, lactose you know is some substance used to mix cocaine.

Did you realize whatever he gave you was a part of the cocaine dealing and so forth?

A I wasn't thinking at the time. I didn't try to throw it away, that was all.

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THE COURT: Mr. Kaplan.

MR. KAPLAN: I think that the receipt of the money in June --

THE COURT: Does that satisfy it?

MR. KAPLAN: Would your Honor ask Ms. Durr if she knew that she was going to get any money from the proceeds of the sale which was to take place on September 22nd.

THE DEFENDANT: No.

MR. KAPLAN: The June transaction, plus she admitted the July act, would satisfy it, your Honor.

THE COURT: She already stated that.

MR. KAPLAN: She admitted the first overt

THE COURT: All right, the government is satisfied.

I will accept the plea and we will set the date for your sentence at January 8th at 9:30. That will be courtroom 1106.

MR. KAPLAN: We will continue the bail, your Honor.

THE COURT: All right.

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2	(In the robing room - counsel present.)				
3	MR. KATZ: Good morning, your Honor.				
4	THE COURT: Let me explain to you about the jur				
5	selection.				
6	By the way, the motion to suppress is denied.				
7	Let me explain to you about the jury selection.				
8	How long is this case going to last?				
9	MR. KAPLAN: Three days.				
10	THE COURT: Will we be through Wednesday?				
11	MR. KAPLAN: I don't know how long the defense				
12	case will be.				
13	THE COURT: The government thinks it is going t				
14	take three days to try your case?				
15	MR. KAPLAN: My case will take at least two and				
16	possibly go into the third day, yes, Judge.				
17	THE COURT: Gentlemen, what about you?				
18	MR. GROSS: I am guessing. Like I say, a lot o				
19	my work, I think, will be on cross and I don't know how lor				
20	that will be, your Honor. It is a nebulcus set up.				
21	THE COURT: What about you, Mr. Katz?				
22	MR. KATZ: I have nothing to say at this point,				
23	your Honor.				
24	THE COURT: I didn't ask you that. I asked you				
25	how long do you think the case will take?				

MR. KATZ: I have no idea.

THE COURT: That is why I wanted a response.

MR. KATZ: Your Honor, may I have an exception on the record to the denial of the motion?

THE COURT: You don't need an exception, you have it. Any ruling I make, your rights are preserved.

All right. I gather this case is not going to last longer than Friday, anyway, so that I am going to choose fourteen jurors and two alternates. That ought to be enough.

The selection process is twelve plus sixteen, which is twenty-eight plus four, thirty-two. Thirty-two jurors will be called, and when you exercise your ten and six challenges, the first twelve jurors that are left, the first twelve, will be your jury. There will then be four jurors, if you exercised all of them, there will be four jurors beyond the twelve and I will allow each side one challenge.

If you exercise that, that will be your two alternates.

Is there any question about the process?

MR. KATZ: Your Honor, at this time I have some further motions to make.

THE COURT: Please. You let me finish. The time is passed for motions.

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MR. KATZ: No. These are trial motions, your Honor, and they go to the misconduct of the government.

THE COURT: All right. If there is nothing

What can I do for you?

else, we will proceed that way.

MR. GROSS: Might I say something, your Honor?

In theory there was supposed to have been fully complete disclosure. I find out this morning, Mr. Kaplan informed me, that there are additional tapes. I don't know the relevance or the pertinence of the tapes, but here we are walking in this morning and he says, "By the way, I have additional tapes and you will eventually get transcripts, etc., etc., etc., etc."

I don't know if this is proper under the circumstances.

MR. KAPLAN: Your Honor, I found out from the DEA people in Chicago on Friday that there were certain tapes in their possession which were relevant to this case. I had the DEA people in Chicago fly them to Kennedy Airport and the DEA people in New York picked them up.

I heard the tapes for the first time on Saturday and we had transcriptions made.

I have a draft of the transcriptions with me.

The full transcriptions are being keroxed. We shall have

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2 3 them in a short time. The tapes are outside. I can play them at any time that counsel would like.

THE COURT: Are you using the tapes in the

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trial?

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MR. KAPLAN: We intend to offer them into evidence

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yes, your Honor.

before that.

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We do not intend to play the tapes until the

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end of the case, but they will be offered into evidence

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MR. GROSS: With this in mind, your Honor states

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that thetime for motions are passed. I don't know what is in

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those tapes, your Honor.

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THE COURT: I can't do anything about that.

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There is a trial here.

16 I gather what you're going to have to do is

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either during the lunch hour or this evening you're going

I will have to listen to them. But the way Mr. Kaplan

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to have to listen to them and if you want to make any motions

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explained the matter, it is something which he had no control

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over.

MR. GROSS: It is not a question of control, your

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Honor.

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I am under the impression that disclosure is complete and this is not an unilateral situation. Suddenly

1 qtlt 2 the people come in and say, "WEll, it's complete, but it is 3 not complete." THE COURT: All right. The point is we are 5 going to trial and we are going to trial now and the point 6 is that you will have to make your accommodations in respect 7 to the tapes later. 8 If the matter becomes such a problem, then you 9 will have to raise it with me in that regard. 10 Mr. Kaplan has explained it and I think the explanation is satisfactory. I have no control over that. 11 MR. KATZ: Your Honor, I now have a motion. 13 Your Honor, I would like your Honor to examine the letter dated November 21, 1975. Is your Honor familiar 15 with the information in that letter? 16 THE COURT: No. 17 MR. KATZ: May I hand this letter to your Honor and have the letter marked as an exhibit to this hearing. 18 19 THE COURT: This isn't a hearing. 20 MR. KATZ: It is part of the trial, your Honor. I would like the letter marked. 21 (Pause.) 23 THE COURT: All right.

The first motion is one --

MR. KATZ: Your Honor, I have two motions.

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THE COURT: Just make the motion. Sit down, make your motion and exercise some control.

MR. KATZ: All right.

I move at this time, your Honor, to preclude any substance of that letter on the grounds, number one, that I believe that the people, or the U.S. Attorney, knew of that information long before they filed their statement of readiness, on the further grounds, your Honor, that while I did not file a comprehensive motion for a bill of particullars here because your Honor, I am precluded from doing so under the Justice Act unless I first am told that the government will not give me full and complete disclosure, Durr did — that is the co-defendant who pleaded guilty — and a complete response was filed by Mr. Fortuin to that motion, upon which I relied.

Furthermore, I was invited into Mr. Fortuin's office, to examine a complete file, and that's how it was represented to me.

That file had nothing in it prior to the dates in September which are recited in this indictment.

The only knowledge that we had of anything prior to the September dates was in the first paragraph of the indictment the government had mentioned the date of May.

None of the dates, times and places have been told to us

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gtlt

that we would have been entitled to under a bill of particulars and, your Honor, I now move that the indictment be dismissed for the misconduct of the government in this 1, and I ask for a full and fair hearing now of each U.S. Attorney who had anything to do with this case so that we can detail for the record when the government first knew about this pertinent matter which would have been given to us under the terms of a ill of particulars.

I think this is highly --

THE COURT: 11 right. You made your motion.

All right, Mr. Kaplan, do you want to answer?

MR. KAPLAN: With regard to the June transaction I told Mr. Katz about that on Wednesday, prior to the time that his defendant attempted to plead guilty.

I secured information about that for the first time on Tuesday, I think, or Monday, when the agents delivered to me their complete file.

Mr. Fortuin's file, as it later turned out,
was not complete. There were certain things missing from
that file. In luded among them was a statement made at the
time of her arrest by Jewelean Durr, which is reflected in
the motion, because they moved to suppress at that time. And
in her statement she says that there is this June transaction,
and when I finally saw too statement was the first time that

I learned of the June transaction.

But Mr. Katz has known about the transaction at least since last Wednesday.

event, because the earlier transaction is not being utilized to support the indictment, the earlier transaction is, at best, a prior similar act, if it is allowed, and to be used and being only used in order to have the jury use it in terms of state of mind, and the time for you to make that motion is when it is offered.

I have no idea whether I am going to allow it in or not.

MR. KAPLAN: Your Honor, that transaction in June comes within the period of the conspiracy charged in this case.

THE COURT: What are you talking about, prior similar act then?

MR. KAPLAN: There are other prior similar acts from 1973 up to that transaction which will be testified to -- I have given your Honor a memo on that -- that will be testified to in court of transactions in cocaine by Figueroa and Ricks --

THE COURT: Let me see that.

You mean this letter is going to cover actions

1	gtlt 10				
2	that				
3	MR. KAPLAN: There are two points in that letter				
4	One with regard to the June transaction at the				
5	Sawmill River Motel, and, secondly, there were prior similar				
6	acts committed by the defendants from 1973 until 1975.				
7	THE COURT: I thought you were talking about				
8	prior similar acts.				
9	You mean the second paragraph, the second para-				
10	graph you're going to utilize the				
11	MR. KAPLAN: The June transactions in fur herance				
12	of the conspiracy.				
13	MR. KATZ: Without having given us any of the				
14	information until that November 21st letter, and we don't				
15	even know from that November 21st letter when this trans-				
16	action is claimed to have taken place. All it says is				
17	"June."				
18	THE COURT: This says during the first week in				
19	June at the Sawmill River Motel on Valley Avenue in Elsford				
20	and New York, involved a sale of eight ounces of cocaine to				
21	John Miller for \$10,000.				
22	MR. KATZ: Now, your Honor, I have a further				
23	motion on that score.				
24	THE COURT: The first motion is denied.				

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MR. KATZ: All right.

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Your Honor, my motion is a bit unusual, but I think we have an unusual situation here.

THE COURT: Well, make it. Make it --

MR. KATZ: John Miller --

THE COURT: Make the motion.

MR. KATZ: I move at this time for a dismissal of the indictment or suppression of anything in June of 1975 on the grounds that what is given to the Court as an alleged overt act is not an overt act at all, but it is a completed crime by the informer at the time that he was not an SCI;

THE COURT: The point is I can't make -- what is the point, you know, in wasting time here with things like that?

If you have any motion on that, I am only going to be able to analyze that when the matter comes up in the trial.

You're telling me things. I don't know, there is no evidence before me and no facts have been developed. I can't rule on that.

MR. GROSS: If the Court please, Mr. Kaplan knows whether or not the SCI was an SCI at that time.

MR. KATZ: He so represented to me.

MR. KAPLAN: Mr. Miller was not an informant at that time, Mr. Miller was arrested in Chicago, Illinois gtlt

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on the 9th of June in possession of the cocaine.

THE COURT: All of that can be explored. I am not going to go into that.

MR. KATZ: Then, your Honor, may we have the SCJ records now so that we can properly prepare any defense?

THE COURT: Have you given him --

MR. KATZ: Nothing.

MR. GROSS: Nothing.

THE COURT: Are you going to give him 3500 . material?

MR. KAPLAN: I am going to give it to him now.

I just got it and I am going to give it.

In that regard, your Honor, there are two arrests which do not show up on Mr. Miller's arrest record. He was arrested for assault in 1968 or 1969, which was dismissed in Yonkers, and he was arrested for corrupting the morals of a minor in 1967 or 1968 in Yonkers and that was also dismissed.

material, not only with regard to Miller, but with regard to all of the material which you have, and it is my practice for that material to be turned over, not the government to husband it.

I know you have a right to do that, but I want it

Let's proceed.

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copies.

MR . KAPLAN: Your Honor, I --

THE COURT: And I might say -- no, I will not do that.

MR. KAPLAN: Your Honor, with regard to the prior similar acts mentioned in the letter, I first learned of those after I talked to Miss Durr after her plea.

The 3500 material I am turning over, the exception being there are the transcript of the two tapes from Chicago, which are not yet Xeroxed.

THE COURT: The thing you ought to turn over to them are the rough drafts of them so they can have those.

MR. KAPLAN: I have them, but I don't have

THE COURT: You don't need them, so let them have them until you get some.

All right, let's go, gentlemen.

MR. KATZ: Your Honor, I would like to put on the record at this time that insofar as these motions are concerned, the statements of the U.S. Attorney as to his ignorance, I refer your Honor to United STates vs. Giglio, which says on the 403 U.S. 150 --

THE COURT: I know that. Obviously the D  $\Lambda$ . had it, so it was in the possession of the qovernment, but that has nothing to do with the physical problem that

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bmlt

The witness is going to testify as to part of the case, but as the case will unfold before you you will have, by the time it closes, all the facts and, therefore, what you have to do is evaluate the witness' testimony and evaluate it against what you know about the whole case.

Now until this case is submitted to you for your deliberations, you are not to talk about it among yourselves and obviously you are not to talk about it with any outsider. You are to keep an open mind. Please, do not make up your mind about this case fter you have heard one or two witnesses. You wait until all the evidence is in and keep your mind open until all the evidence is in.

All right, Mr. Kaplan, you may proceed.

MR. KAPLAN: Thank you, your Honor.

May it please the Court, Judge Carter, Mr. Katz and Mr. Gross, ladies and gentlemen of the jury:

This is a case about people who traffic in narcotic drugs and about how these people organize and structure their narcotic business.

The participants range from the couriers and sellers of the drugs such as Mr. Ricks, to the source of the drugs, the people who hide behind the scenes and remain out of view, such as Mr. Figueroa.

The narcotic drug involved in this case is cocaine.

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You will hear testimony of two transactions involving cocaine. One, a sale of eight ounces for \$10,000 and the other attempted sale for slightly less money.

I am Gene Kaplan. I am an Assistant United
States Attorney. Sitting with me is Fred Virella, also an
Assistant United States Attorney. It is our privilege to
present this case to you on behalf of the United States. My
sole interewst at this point is to present an outline of the
charges and the evidence we will introduce to prove those
charges. I do so because during the trial each witness will
testify about only that which he or she knows, and thus the
proof may not flow in an entirely orderly or chronological
fashion.

The proof may sometimes seem to be somewhat of a jigsaw puzzle. A piece here and a piece there. In summation I will have an opportunity to demonstrate to you why the proof shows beyond a reasonable doubt the guilt of William Figueroa and Herbert Ricks.

Although the indictment in this case charges
three individuals, Herbert Ricks, Jeweleana Durr and William
Figueroa, only Figueroa and Ricks are on trial before you.
You must only determine whether they are guilty or not
guilty of the charges against them.

Mrs. Durr has pleaded guilty and is awaiting

sentence.

They will testify before you. Thus, you will hear from one of the defendants, someone who is on the inside, who knew what was going on, who heard the words spoken and who participated in the conspiratorial acts.

The india nt in this case contains two counts in which Mr. Figueroa is named and three charging Mr. Ricks.

The first count charges both Figueroa and Ricks as well as Mrs. Durr with conspiracy to sell and distribute cocaine.

The conspiracy runs from May 1st, 1975 until October of 1975.

The second count charges Figueroa and Ricks, as well as Mrs. Durr, with possession with intent to distribute cocaine on September 22, 1975.

The third count charges only Ricks with possession with intent to distribute cocaine on the same day.

As Judge Carter has told you, the indictment is not evidence. The evidence which we expect to introduce can be summarized in the following fashion.

In the early part of June of this year, 1975,
pursuant to prior conversations, Herbie Ricks, and Jeweleana
Durr went from Brooklyn to the Sawmill River Motel in
Elmsford, New York. There they met in one of the rooms
with an individual known as John Hiller. Ricks and Miller
negotiated for the sale of eight ounces of cocaine. Miller

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was to pay Ricks \$10,000 and Ricks was to deliver the cocaine. Once the agreement was reached, Ricks and Durr went back to Brooklyn. There they met with William Figueroa there were instructions; Ricks, Figueroa and Durr then got back into Ricks' car and drove back to Elmsford, New York. Ricks' car was followed throughout the trip by another car taking Figueroa's people.

Once at the motel at Elmsford, they parked. By then Figueroa had given eight ounces of cocaine to Ricks.

Ricks and Durr proceeded to Miller's room. Figueroa went into the other car. Once inside the room the deal was made.

Ricks gave Miller the cocaine and Miller gave

Ricks \$10,0001. Ricks, Durr, Figueroa and his friends, then

left and drove back to Brooklyn.

on the next day Ricks went back to the motel and cut the cocaine for Miller. Eight ounces of cocaine was converted into twenty-four. You will hear that Mill was arrested in Chicago on June 9th with these twenty-four ounces of cocaine in his possession. You will learn that Ricks and Figueroa continued to do business, to sell cocaine.

You will hear how Figueroa left cocaine for Ricks with Jewelean Durr and how Ricks delivered money for the cocaine to Figueroa in a similar fashion.

However, their days were numbered.

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of this call.

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On September 22, 1975, Miller, now an informant with the Drug Enforcement Administration, called Ricks and arranged to meet with him at Martel's Bar at Third Avenue and 33rd Street in Manhattan. You will hear a tape recording

You will learn that Ricks and Durr met Miller at about 3 p.m. on September 22, 1975 and set up a deal with cocaine which was to be concluded that evening.

After leaving Martel's at about 4 p.m., Ricks and Durr returned to 717 Rockaway Prrkway in Brooklyn, which was where Durr and Ricks lived. Some time later Ricks left the apartment and met someone at Shenks Street and Stanley Avenue in Brooklyn. He then returned to 717 Rockaway Parkway and received a telephone call from Miller.

Miller told Ricks that he and his girlfriend, who was really an undercover Drug Enforcement agent, would be waiting for him at Room 286 at the Skyline Motor Inn on 10th Avenue between 49th and 50th Streets in Manhattan, and told him he would get there between 9:30 and 10 o'clock that night.

This call is on tape and you can hear it. After the call, Ricks went out to find Figueroa. He met with him at McDonald's on Pennsylvania Avenue and Linden Boulevard in Brooklyn.

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Ricks ther went back to the apartment in Rockaway Parkway and left at about 9 p.m. They then drove to Figueroa's house and Figueroa handed eight ounces of cocaine to Ricks.

Ricks and Durr got out of their car and followed Figueroa's car into Manhattan. While in the car, Ricks handed the ocaine to Jewelean Durr and asked her to take some out and place it in an empty bag. And you will hear testimony that Jewelean Durr did this.

When Ricks' and Figueroa's cars reached 49th

Street and started to head west, Ricks' car passed Figueroa's and took the lead. Both Ricks' and Figueroa's cars were parked on 49th Street between 10th and 11th Avenues.

Figueroa remained in his car, behind the scene, while Ricks and Durr got out of theirs and went up to Room 246 of the Skyline.

Once in the room they met with Miller and his friend. Ricks placed the eight ounces of cocaine on the dresser and the arrest of Ricks and Durr took place. This is on tape and you can hear it.

Figueroa was then apprehended in his car and the arrest of the cocaine that was in Ricks' car was recovered

Ladies and gentlemen, you will hear tapes of the phone conversations between Ricks and Miller; you will bmlt

hear a tape of what went on in the hotel room. There are other tapes as well.

You will see the cocaine involved in this case and other evidence will be presented to you by the government.

As the Judge has said, what I say now and what I may say later in summations is not evidence. What defense counsel mgiht say to you is not evidence. The evidence will come from the witnesses and from the exhibits.

I ask you to pay close attention. This is an important case both for the defendants and for the government. The government's burden of proof in this case is to prove the defendants guilty on each charge by credible evidence, beyond a reasonable doubt. We shoulder that burden willingly and I am confident that when all the proof is in, we will have satisfied that burden and convinced you of the guilt of these defendants beyond any reasonable doubt.

Thank you very much.

THE COURT: Mr. Gross.

MR. KATZ: Your Honor before Mr. Gross, I have a motion for mistrial.

THE COURT: Sit down, please.

Mr. Gross.

MR. GROSS: Your Honor, United States Attorney's office, Mr. Katz, ladies and gentlemen of the jury:

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gtlt 14 Miller-direct

all right, and everything's cool.

Following that, I spoke to Herbie in mid-June, maybe two weeks later. I called him from Las Vegas. I asked him if I can get a kilo of cocaine. He said yes, I can.

I asked him a price. He said \$36,000.

I said "I'll try to get the deal together as soon as possible, I'll get back to you."

THE COURT: Mr. Katz, sit down.

MR. KATZ: Your Honor, I would like a side bar at this point.

THE COURT: No, no side bars. Sit down.

MR. KATZ: Your Honor, then I have a motion. I want to make a motion to strike all testimony given by Mr. Miller with reference to anything that occurred in June 1975 on the grounds that the government did not fairly apprise us of dates, times and places of matters pertinent to the indictment.

THE COURT: The motion is denied.

Proceed, Mr. Kaplan.

MR. KAPLAN: Thank you, your llonor.

- Q When, if ever, Mr. Miller, did you speak with either Jeri or Herbie again?
  - A After June?
  - Q Yes, after June.

1	gtlt 2	Miller-cross						
2	Ω	Would you know the present status of that par-						
3	ticular pro	ticular proceeding?						
4	A	It's the case is pending.						
5	Q	Would you have any idea as to when that case						
6	might proceed to trial?							
7		MR. KAPLAN: Objection, your Honor.						
8		THE COURT: He can ask that.						
9	A	Come to trial?						
10	Q	Yes.						
11		THE COURT: Have you any idea when it might						
12	come to tri	come to trial?						
13		THE WITNESS: No, not when it would come to						
14	trial.							
15		MR. GROSS: No further questions.						
16		THE COURT: Do you want to examine, Mr. Katz?						
17		MR. KATZ: Yes, your lionor, I do, but I want a						
18	side bar before I do.							
19		THE COURT: You are not having a side bar, so						
20		MR. KATZ: Then I will make my motion now, your						
21	Honor.							
22		I move, your Honor, that the government disclose						
23	to the defendant at this point any criminal acts known to hav							
24	been committed by Mr. Miller during the period outlined in							

the indictment, from May 1, 1975, to date.

1	GGtlt 3 Miller-cross
2	MR. KAPLAN: We have given the defendant
3	everything that we have.
4	THE COURT: All right, proceed, Mr. Katz.
5	MR. KATZ: Your Honor, may I
6	THE COURT: Proceed, Mr. Katz.
7	MR. KATZ: Yes.
8	I would like the document that I gave your
9	Honor, 3502, it is annexed to one of the exhibits.
10	Your Honor, I will proceed as far as I can
11	today, but I do not believe I will be able to finish up
12	with this witness.
13	THE COURT: Let's see.
14	CROSS EXAMINATION
15	BY MR. KATZ:
16	Q Mr. Miller, what day did your
17	THE COURT: Mr. Miller, keep your voice under
18	control, please. There is no need to yell.
19	O Mr. Miller, what day did your agency with the
20	United States government terminate?
21	THE COURT: Mr. Katz, stand back by the lectern
22	A Could you repeat that question, please, sir?
23	THE COURT: When did your informant status
24	begin?

THE WITNESS: Begin?

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THE COURT: Yes.

THE WITNESS: In June.

No, I'm sorry, you misunderstood the question. I asked you what date did it terminate.

- Working with the government? A
- That's right. 0
- It hasn't terminated, I don't believe.
- Oh, it hasn't?

MR. KATZ: Does the government vouch on this

day that Mr. Miller is still an informer?

MR. KAPLAN: Your Honor, I --

THE COURT: I beg your pardon?

MR. KATZ: I ask if the government --

THE COURT: We will take a recess now. We

will take our mid-afternoon recess.

The jury is excused.

(Jury left the courtroom.)

THE COURT: You may be excused for the recess.

Go back to the witness room.

(Witness temporarily excused.)

THE COURT: You stay where you are, Mr.

Figueroa.

DEFENDANT FIGUEROA: Excuse me. I have to go to the bathroom.

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Miller-cross

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THE COURT: All right.

Mr. Katz, I told you when this trial began that I demanded decorum in this courtroom and I am not having any of this kind of thing that you are beginning to put up here.

Now, you have things that the government -- you had everything that the government had.

MR. KATZ: No, I did not, your Honor.

THE COURT: You had everything that the government knows anything about ---

MR. KATZ: No, your Honor, I do not.

THE COURT: -- and you are not going to be making anymore of those statements in front of the jury.

If you start making any further statements in front of the jury in disregard of my orders, you are going to be held in contempt.

Now, I am tired of this and I am not going to have it.

MR. KATZ: Okay. Then, your Honor, will you let me have it out now outside in front of the jury?

May I please put some statements on the record row as to what has been going on here, what has transpired?

THE COURT: I am not --

MR. KATZ: Your Monor says that I have had this.

I did not have this. I did not have this until I walked in

gtlt 6

Miller-cross

here this mo ning.

THE COURT: The point is that you had it when you asked the question.

MR. KATZ: No, your Honor --

THE COURT: And you knew you had it when you asked the question.

MR. KATZ: No, your Honor, I do not have that.

yelling and screaming in this courtroom. I am not going to have you have you jumping with a whole lot of nonsensical motions.

You are going to conduct yourself orderly, or else you are going to be held in contempt.

Now, you just mind that.

MR. KATZ: Your Honor, I most respectfully ask your Honor if he has examined the overt act3 in the complaint which was given to us as 3502 material.

THE COURT: No, I have not.

MR. KATZ: Will your Honor do so at this point, because I think it is most probative as to what I have been trying to do.

THE COURT: All right. Then we will take a recess. Give me 3502.

(Recess.)

(In open court - in the absence of the jury.)

THE COURT: Mr. Figueroa, I want you back in

here and when these sessions are supposed to start, I want

you here and when we take a recess from 1 to 2 you are to

be here at 2 o'clock. When we start at 10, you will be here

at 10 o'clock.

I want all of you to understand that, because otherwise if I can't get you here I am going to take some measures. I am not going to have this.

All right, sit down.

What is there about 3502 that you want to bring to my attention? I have read it.

MR. KATZ: Yes, your Honor.

Your Honor wil notice in the first paragraph of the complaint that the date upon which this complaint is predicated is the same date as predicated in our indictment.

Now, your Honor, we have a situation here -THE COURT: Come on, tell me. I don't want
a speech. Tell me what you want. There is no jury here.

MR. KATZ: All right, your Honor. I am going to go into and cross examine as to every allegation in that document. Before I do so, I want to know at what point he terminated being an SCI for the government. If he is still an SCI today for the government, I want that, also, made

1 gtlt 8 Miller-cross 2 clear upon the record. 3 THE COURT: Is this what he is being indicted for here? 5 MR. KAPLAN: Your Honor, what happened here was 6 this: 7 He was arrested in Chicago in June 9th and he 8 became an informant for the government. 9 He has always been and he is today, to the best 10 of my knowledge, an informant for the government, since the 11 arrest in Chicago. 12 However, the charges which were brough against 13 him in New York by this complaint, what happened there was 14 he was double-dealing the government, and at the time that 15 he was an informant for the government, he went out on his 16 own and got involved in this conspiracy, which is wholly 17 apart from the one on trial, he was arrested and he was 18 charged. 19 THE COURT: I see. All right. 20 MR. KAPLAN: And these charges are pending. 21 Mr. Gutman, who is his attorney on the New York 22 charge, is here and he can explain to the Court if there is 23 anything further. He is more familiar with them than I am, 24 probably.

1 gtlt 9

## Miller-cross

I am not going to allow you to go into detail on that. You can ask him what charges are pending against him and get his answer, but you are not going into that and you are --

MR. KATZ: Your Honor --

THE COURT: You are not going into it.

MR. KATZ: Your Honor, there is a case called United States versus Russell, 411 U.S. 423.

The only thing I am concerned about with reference to the Russell case, is that there is a dictum in that case that says that if an agent or an informer violates, a federal statute or rule, during the time of his conduct as an SCI, there has been disobeyance upon the part of the government.

Now, it is a dictum, your Honor. However, I think that the United States Supreme Court was saying something here and what the United States Supreme Court was basically saying here, is that we cannot tolerate a situation where Mr. Miller is committing crimes while an SCI of the government.

THE COURT: But that has nothing to do with you.

That has nothing to do with you.

Sit down, Mr. Katz .

MR. KATZ: Wait a minute, your Honor.

THE COURT: Sit down. I have enough of that.

Judge, but basically the offer of proof is that she got

the cocaine from Merbie Ricks, and she gave it to Miller.

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MR. GROSS: He starts in leading.

to Robinson.

THE COURT: He hasn't led anybody, not yet
this morning, but she got the cocaine from Ricks and she gave

That was during the period of the conspiracy.

it to this man?

MR. KAPLAN: Right, she gave it to this man.

After that, Miller tried it, as he testified yesterday, they had conversations, she called Ricks on the phone, Miller had the conversation with Ricks, they arranged a meeting for that evening.

event. If you have a telephone call, I don't see what you're struggling for. What do you need that in any event? Was she commissioned? Is your theory that she came around with cocaine commissioned from Ricks to have people test it out?

MR. KAPLAN: She had a conversation with Harry Robinson the day before to set up the meeting. At that time Robinson said to her, "Bring something with you, bring some cocaine with you," and she had a conversation.

MR. KAPLAN: She then had a conversation with Ricks that evening, and Ricks gave her the cocaine to take

MR. KATZ: Your Honor, I have to object to all

this as being highly prejudicial. Our position is very simple. So far as Robinson is concerned until he walked into this courtroom here yesterday, nobody told us anything about Robinson, nobody told us any of these acts, etc.

We first received that letter on November the 21st. How can we prepare a case this way?

had a conversation with Robinson and thereafter had a conversation with Ricks and so forth, it seems to me that's where you ought to start. I don't see any point in any of the other.

Obviously, if she had a conversation with Ricks and Ricks told her to go to this meeting, gave her cocaine to go to the meeting to set it up, obviously that is admissible but you haven't even -- this is the first I have heard of any conversation with Ricks prior to the meeting. If that is what you want to bring out, then you may, but don't lead her.

MR. GROSS: May I say, your Honor, also the government at least before asking its questions, did you have a conversation, when and where, and then go into the conversation.

THE COURT: I think the conversation he was talking about at this point was a conversation I think that had been described at a meeting with Robinson.

1	mblt	Dur	r-direct	153			
2		MR. GROSS:	Fine.				
3		THE COURT:	At that time.				
4		MR. GROSS:	Define it in some vay.	I don't want			
5.	to jump up and make objections and waste the Court's time,						
6	your Honor.						
7		THE COURT:	I agree.				
8		MR. GROSS:	At least put it in prop	perly.			
9		THE COURT:	I agree. Let's get the	e time.			
10		MR. GROSS:	Place, who was present				
11		MR. KATZ:	Can we have the details	, your Honor?			
12		THE COURT:	Yes.				
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(In open court.)

## BYMR. KAPLAN:

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- O The night before this meeting with Mr. Miller, did you have a conversation with anyone?
  - A Yes.
  - Q With whom?
  - A Herbie.
  - Q Was anyone else present?
  - A No.
  - O What was said?

THE COURT: Again, ladies and gentlemen, that's one of the nstances that I advised you this conversation of Miss Durr with Mr. Ricks is to be received by you only as it affects Mr. Ricks at this time.

All right. You may proceed.

- A I told Herbie that I had met -- Harry Robinson had introduced me -- that I was going to meet John Miller the next day and that he wanted a sample of cocaine.
- Q And did Ricks say anything to you during that conversation?
  - A Yes.
  - Q What?
  - A He gave me a sample of cocaine to give to him.
  - Ω Now, what did you do with that cocaine?

1	jglt. Durr-direct 155
2	A The next day I met with John Miller at Harry
3	Robinson's office and I gave it to him.
4	O And after you gave him the cocaine, what
5	happened?
6	A He left the room.
7	Ω Did he come back?
8	A Yes.
9	Q And after he came back, what happened?
10	A He gave the cocaine to Diane and she left the
11	room and then she returned.
12	O And after she returned, what happened?
13	A He asked me John asked me the price of the
14	cocaine and how much it would cost
15	MR. KATZ: Objection, your Honor.
16	THE COURT: The objection is overruled.
17	MR. KATZ: I'm objecting
18	THE COURT: The objection is overruled.
19	Q You may continue.
20	A John asked me the price of the cocaine, how
21	much it would take, and I told him that I didn't know, I
22	would have to check with Herbie. So I called Herbie.
23	Q And what happened?
24	A I called Herbie and spoke with him and told hi
25	what John had said, and he informed me to call him later.

1	d-21+	Dunn dinact
	jglt	Durr-direct 156
2	O.	And after that call to Herbie, did anything
3	happen?	
4	λ	Yes.
5	Ú	What?
6	λ	John, Diane and myself and Harry, we left the
7	office and	we went to the park.
8	Q	And what happened in the park?
9	A	We sat around talking and smoking.
10	Ω	Smoking what?
11	A	Marijuana.
12	Ú.	Did you go anyplace from the park?
13	Λ	Yes. We went to a bar.
14	Ũ	Where was the bar located?
15	A	On 59th.
16	Ω	What happened there?
17	A	We all sat down and we had a drink and then John
18	asked me to	call Herbie.
19		MR. KATZ: Your Honor, I am going to object to
20	this entire	e line of questioning. Mr. Ricks was not present.
21		THE COURT: I have the objection, Mr. Katz, and
22	it is over	ruled, and you need not object any further on this
23	point.	
24		MR. KATZ: All right.
25		MR. KAPLAN: Could you read back where I was?

			MIOO
1	jglt	Durr-direct	157
2		THE COURT: Miller asked her to ca	all Mr.
3	Ricks.		
4	0	And ashan William in	
5		And after Miller said that to you,	what did you
6	do?		
7	A	I went to the telephone and I call	ed Herbie.
	Q	Where did you call him?	
8	A	At my house.	
9	Q	Did you have a conversation with h	im?
10	A	Yes.	
11	Q		
12		What was said?	
13	A	I told him that John wanted to spe	ak to him, and
14	I put John	on.	
	Q	Did John have a conversation withh	im?
15	A	Yes.	
16	Q	Did you hear that conversation?	
17	A	No.	
18	Q	What happened next?	
19	Λ		
20		Before John hung up the phone, he o	
21		Herbie wanted to speak to me, and	I spoke with
22	him.		
23	Ω	What did he say to you and what did	you say to
24	him?		
	λ	He said that for me to he said t	hat he would
25	have to chec	k things out and that to call him 1	ater.

1	jblt	Durr-direct 158
2	Q	And after that call was over, did anything
3	happen?	
4	A	Yes.
5	Ö	What happened?
6	A	I gave John my telephone number at work, to
7	call me the	re.
8	Ω	And after you gave him the telephone number at
9	work, did y	ou go anyplace?
10	A	Yes.
11	Q	Where?
12	A	I went back to work.
13	Q	When was the next time you heard from Miller?
14	A	Later that day.
15	Q	Do you know what time?
16	A	No.
17	Q	Do you know where?
18	A	Yes.
19	Q	Where?
20	A	At my office.
21	δ	How did he get in touch with you?
22	Λ	By telephone.
23	Ω	Did you have a conversation?
24	λ	Yes.
25	Ω	What was said during that conversation?

1	35
2	A He asked me if I had spoke with Herbie and that,
3	as far as the price of the cocaine, that it wasn't reasonable
4	and for me to see if I could do anything about it. And I
5	told him to hold on.
6	O And you told him to hold on, and what happened
7	after that?
8	A I called Herbie at home andtold him what John
9	had said and he just said to give him the numbe at the
10	house and to call back later.
11	O And when you finished that conversation with
12	Herbie, what, if anything, happened?
13	A I went back to the other phone and spoke with
14	John and told him gave him my telephone number at home an
15	told him to call me there.
16	O When was the next time you heard from Miller
17	after that?
18	A That afternoon, after I got home from work.
19	Q Where?
20	A At home.
21	O Was anyone else at your house at that time?
22	Λ Yes.
23	Q Who?
24	A Herbie.

Did you have a conversation with Miller?

1	jblt	Durr-direct 160
2	A	Yes.
3	Q	What was said?
4	A	He asked to speak to Herbie.
5	0	And what did you do?
6	A	I put Herbie on the phone.
7	0	And did he then have a conversation with Herbie?
. 8	Λ	Yes.
9	Q	Did you hear it?
10	A	No.
11	Ω	During that call, what did Ricks do?
12	A	He asked me for a pencil and paper to take down
13	whatever J	ohn was going to tell him.
14		MR. KATZ: Objection, your Honor. That's
15	characteri	zation.
16		THE COURT: Overruled.
17	0	And did you give him the pencil and paper?
18	A	Yes.
19	Q	And after the call, did you have a conversation
20	with anyon	e?
21	Α	Yes.
22	Ú.	Who?
23	A	Herbie.
24	0	What was said?
25	A	He told me Herbie said that he was going to meet

1	jglt	Durr-direct	161
			n.
2	John later	at the Saw Mill River Road in Tarrytow	
3	O	Did anyone leave your house after thi	S?
4	Λ	Yes.	
5	0	Who?	
6	A	Herbie.	
7	0	Do you know where he went?	
8	A	No.	
9	O.	When he came back, did you have a con	versation
10	with him?		
11	A	Yes.	
12	Q	What did he say to you and what did y	ou say to
13	him?		
14	A	He said that he had went to speak wit	h Willie
15	about the c	ocaine and that we were going to go up	and see
16	John and se	e what happens.	
17	0	By "Willie," who do you mean?	
18		MR. GROSS: Objection.	
19		THE COURT: Overruled.	
20		You may answer.	
21	A	Willie Vigueroa.	
22	Q	Now, you testified that you gave Rich	ks the penci
23	and paper,	am I correct?	
24	۸	Yes.	
25	0	What did he do with it?	

1	jglt	Durr-direct 162
2	A	He wrote down the telephone number of the hotel
3	and the room	n number where John was staying.
4	0	Did you ever do anything with it?
5	٠,٧٠	Yes.
6	Q	What?
7	λ	I wrote it in my telephone book.
8	Ö	I show you Government's Exhibit 6 for identifi-
9	cation and	I ask if you recognize it.
10	A	Yes.
11	Ö	What is it?
12	A	It is my telephone book.
13	Q	And who wrote the entries contained in it?
14	Λ	I did.
15	Q	Now, directing your attention to the page that
16	has a paper	clip on it, can you tell us what that is?
17	A	The telephone number of John, and room number.
18	Q	And who we te that?
19	A	I did.
20		MR. KAPLAN: Your Honor, at this time the
21	government o	offers Government's Exhibit 6 for identification
22	in evidence.	
23		MR. KATZ: No objection, your Honor.
24		THE COURT: Received.
25		(Government's Exhibit 6 was received in
	evider	nce.)

1	jglt	Durr-direct	1.63
2		MR. KAPLAN: Your Honor, may I read a	part of
3	Exhibit 6 to	the jury?	
4		THE COURT: Well, that is the only par	rt of it
5	you have in	evidence, isn't it?	
6		MR. KAPLAN: The whole book went in.	
7		THE COURT: But I mean the only thing	that you're
8	admitting is	s that page?	
9		MR. KAPLAN: That's correct.	
10		There is an entry here which says:	
11		"John, 914 LY 2-7500. Room number 14	5."
12		I think we left off that Herbie had c	
	0	se and you had a conversation with him	
13	to your hou	se and you had a conversation with him	, 20
14	correct?		
15	Λ	Yes.	
16	Q	Did anything happen after that?	
17	Λ	Yes.	
18	Ω	What?	
19	Λ	We left.	
20	Q	Where did you go?	
21	Λ	We went to Lewis Avenue, where we cha	anged cars
22	and then we	went to Tarrytown.	
23	Ω	What kind of car did you have when yo	ou left the
24	house?		

A black Cadillac.

Q And what kind of a car did you get on Lewis Avenue? A An orange Volkswagen.  A An orange Volkswagen.  A An orange Volkswagen.	10								ect	dire	urr	D			jglt	1
A An orange Volkswagen.  A An orange Volkswagen.  A An orange Volkswagen.		on	: 1	get	u	you	did	car	ā	of	kind	what	And	Q		2
5 6 7 8 9 100 111 122 13 14 15 16 17 18													e?	λvenu	Lewis	3
6 7 8 9 9 100 111 122 13 14 15 16 17 18								en.	ag€	kswa	Vol	range	Λn	A		4
7 8 9 9 100 111 12 13 14 15 16 17 18																5
8 9 10 11 12 13 14 15 16 17 18																6
9 10 11 12 13 14 15 16 17 18																7
10 11 12 13 14 15 16 17																8
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23																23
24																- 11

ke 3 a.m.

23

25

Then Herbie gave John some cocaine and John gave

He said "Yes."

Then what happened?

1	mblt Durr-direct 166
2	Herbie a \$100 bill where Herbie had put some cocaine in.
3	Ω Wall, how did that come about? Could you
4	explain that a little more clearly?
5	A Well, after Herbie and John's conversation,
6	John showed Herbie the money to let him know that he wasn't
7	planning you know, he wasn't jiving and he took out a
8	\$100 bill and he told Herbie that he wanted some cocaine and
9	Herbie said that he that he didn't have much, so he took
10	out some of the cocaine out of the package that he had and
11	put a little in the \$100 bill and gave John the rest.
12	O What happened after that?
13	A We left.
14	O After you left the motel, did you go anywhere?
15	A Yes.
16	O Where did you go?
17	A We went to Willie's house in Brooklyn.
18	Ω By Willie, who do you mean?
19	A Willie Figueroa.
20	O Who was there?
21	A Willie, his girlfriend, I guess his brother.
22	O Did anything happen there?
23	λ Yes.
24	Q What happened?
25	A John Herbie and Willie had a conversation.

1	mblt	Durr-direct 167
2	Q	Did you hear that conversation?
3	λ	No.
4	0	Did anything happen after that?
5	λ	Herbie made a telephone call.
6	Ü .	Do you know who he called?
7	A	No.
8	Ω	After Herbie made the call, did anything happen?
9	A	Yes.
10	Q	What?
11	A	We left.
12	Ü	When you said "We left," who left?
13	Λ	Herbie, Willie, myself and his brother.
14	Ω	Did you go someplace?
15	. А	Yes.
16	Ω	Where did you go?
17	A	We went downstairs and got in our car and went
18	to the mote	l in Tarrytown.
19	Q	You all got into the same car?
20	Λ	No.
21	Q	You did not?
22	A	No.
23	Q.	How did you go?
24	Λ	Herbie, Willie and myself, we went in our car,
25	and hisbrot	her and them went in another car.

1			
1	mblt	Durr-direct	168
2	Q	Did you do anything in the car?	
3	Α .	Yes.	
4	Ω	What did you do?	
5	Λ	I went to sleep.	
6	Ü	At some point did you get to the mote	1?
7	Λ	Yes.	
8	Ω	When you got to the motel, what happe	ned?
9	A	Herbie and I got out of the car and W	illie got
10	out of our	car and got into the car with his brot	her, and
11	Herbie and	I went to the room, back to John's ro	om.
12	Q	And when you got back to John Miller'	s room,
13	what happe	ned?	
14	A	Herbie gave John the two bags of coca	ine.
15	Q	What happened after that, if anything	?
16	A	John opened up the package and he sam	pled the
17	cocaine, a	nd then he asked Herbie for a scale.	
18	Q	Was there a conversation?	
19	λ	Yes.	
20	Ω	What was said?	
21	A	John gave Herbie the money, and then	he asked
22	Herbie for	a scale and he asked me Herbic told	l me to go
23	out to the	car and get a scale for him.	
24	Ü	What did you do?	
25	Λ	I went to the car where Willie was an	nd told him

1	mblt Durr-direct 169
2	that Herbie needed a scale, and he gave me one and I carried
3	it back to the motel room.
4	Q When you got back to the motel room, what
5	happened?
6	A I gave John the scale that I had and he weighed
7	the cocaine, and then Herbie left.
8	Q Did you leave with Herbie?
9	A No.
10	Q What did you do?
11	A I stayed in the room with John, and talked, and
12	he gave me some cocaine before I left to and told me
13	to make sure that I took care of Harry.
14	Q Who is Harry?
15	A The friend that Harry is the one that intro-
16	duced me to John Miller.
17	Q Then you left the room?
18	A Yes.
19	O Did you go anywhere?
20	A Yes, I went back and got in the car.
21	0 Was anyone else in the car?
22	Λ No.
23	Q Did you see anyone?
24	A Yes.
25	Q Who?

1	mblt	Durr-direct 170
2	A	Herbie.
3	Ü	Where was Herbie?
4	A	He was getting out of the car with Willie.
5	Ω	And where did he go?
6	A	He came and got in the car with me.
7	Q	When he got back in the car with you, where did
8	you go?	
9	A	We went back to Brooklyn.
10	Ω	On the way, did Herbie give you anything?
11	A	Yes.
12	Ω	What did he give you?
13	A	He gave me \$400.
14	Ω	On the way back to Brooklyn, when he gave you
15	that money,	did you have a conversation with him?
16	A	Yes.
17	Ω	What did you say to him and what did he say to
18	you?	
19	Λ	He said that because of the fact that he owed
20	Willie mone	y for some cocaine, that he didn't make but \$800
21	out of the	deal.
22	O.	Mrs. Durr, when you went to the motel on the
23	first occas	ion that night, did Ricks have anything with him?
24	λ	Yes.
25	0	What did he have?

1	mblt	Durr-direct 171	
2	A	He had some cocaine.	
3	0	How much?	
4	Λ	Very small amount.	
5	Ω	When Ricks went back to the motel the second	
6	occasion, t	that night, did he have anything with him?	
7	A	Yes.	
8	Ω	What?	
9	A	He had the cocaine that John had asked for.	
10	Q	How was that packaged?	
11	A	In white baggies.	
12	Ď	In between the first and second trips that	you
13	made to the	e motel, where were you?	
.14	Λ	At Willie's house.	
15		THE COURT: Why do we have to go all through	
16	this? You	have gone through it once. Why do we have to	0
17	go through		
18		MR. KAPLAN: I'm sorry, your Honor. I will	move
19	on.		
20	Q	On the next day, the day after you were at	the
21	motel, did	you go anywhere?	
22	Λ	Yes.	
23	Q	Where did you go?	
24	Λ	I went to work.	
25	Ω	Did you return from work?	

			ALZI
1	mblt	Durr-direct	172
2	A	Yes.	
3	0	Where did you go to from work?	
4	V	I went back home.	
5	ū	Was anyone there when you got there?	
6	A	Yes.	
7	Ö	Who?	
8	Λ	Herbie.	
9	Ō	Did you have a conversation with Herb	oie at that
10	time?		
11	A	Yes.	
12	0	What did he say to you and what did y	ou say to
13	him?		
14	A	He said that Herbie said that John	had been -
15	John had ca	lled him earlier that morning, and he	had been
16	with him mo	st of the day cutting the cocaine for	him.
17	Q	Did you hear from Miller again?	
18	A	Yes.	
19	0	When?	
20	A	About two months later.	
21	()	llow?	
22	Λ	By telephone.	
23	O.	Did he say where he was calling from?	,
24	Λ	Yes.	

Where?

1	mb).t	Durr-direct 173	
2	Λ	Las Vegas.	
3	Ó	Where were you at that time?	
4	Α	At home.	
5	Ω	Was anyone with you?	
6	Λ .	yes.	
7	Ó	Who?	
8	A	Herbie.	
9	Q	Did you have a conversation with Miller at the	at
10	time?		
11	A	No.	
12	Ű	Did anyone have a conversation with Miller at	
13	that time?		
14	A	Yes.	
15	Q	Who?	
16	A	Herbie.	
17	Q	Did you hear what was said?	
18	A	No.	
19	Q	After the call, did you have a conversation	
20	with Ricks	?	
21	A	Yes.	
22	Q	What did he say to you and what did you say t	0.
23	him?		
24	Λ	Herbie said that John had called and that he	was
25	in Las Veg	as, and that he wanted him to come out.	

1	mblt	Durr-direct 174
2	Ú	During the summer of 1975, did you see Willie
3	Figueroa?	
4	Λ	Yes.
5		THE COURT: Who?
6		MR. KAPLAN: Willie Figueroa.
7	Q	How often?
8	A	Many times.
9	Q	Directing your attention to July, specifically
10	to aperiod	after the 4th of July, did you have a conversa-
11	tion with H	erbie?
12	A	Yes.
13		MR. KATZ: Your Honor, objection. We have no
14	dates, time	s and places necessary as to any specifics by
15	the governm	ment.
16		THE COURT: I don't believe that that is a ground
17	or circumst	ance for an objection. It is overruled.
18		MR. KAPLAN: Mr. Reporter, what was the last
19	answer?	
20		THE WITNESS: "Yes."
21		THE COURT: What was the question?
22		(Record read.)
23	Q	Where?
24	Λ	At my house.
25	0	What was said?

- 1			
1	mblt	Durr-direct	175
2	Λ	Herbie said that Willie was coming by	y later
3	and was goin	ng to leave a package with him for me	to give him
4	the money th	nat he had left.	
5	Ω	What happened? What if anything hap	pened after
6	that?		
7	A	Willie came by the house later that	night and he
8	left a pack	age and I gave him the money that Her	bie had left
9	for him.		
10	Ω	Do you know what was in the package?	
11	A	Yes.	
12	Q	What?	
13	A	Cocaine.	
14	Q	Was this the first time that you gav	e money to
15	Mr. Figuero	a and received cocaine from Mr. Figue	roa at the
16	request of	Mr. Ricks?	
17	λ	No.	
18	Ω	Were there other times?	
19	Λ	Yes.	
20	Ü	When?	
21		MR. KATZ: Your Honor, I am going to	renew my
22	objection.		
23		THE COURT: The objection is overrul	led. The
24	objection i	s overruled, at least tentatively.	
25			

When?

either in any event, Mr. Gross.

MR. GROSS: Excuse me?

THE COURT: I don't understand for what purpose you propose to use that in any event.

MR. GROSS: She made the statement --

a plea before me, but that statement was for a specific purpose. And whether or not she said anything in there or whether she covered everything, and so forth and so on, is beside the point. That statement was made for a specific purpose, to verify for me the facts upon which she stated that she was pleading guilty, and that statement was made for my purposes.

I don't know what you want to use that for in any event, and I don't know what has been established that you have as a basis upon which to use it.

MR. GROSS: Could we have a side bar?

THE COURT: No. We don't need any side bar.

MR. GROSS: I say, your Honor, the statement was made before the Court --

THE COURT: The point is that there has to be some basis for establishing that you have a reason to use the statement. You haven't established any basis for it yet. I allowed you to use her other statement on the theory

1	jg 18 Durr - cross
2	MR. GROSS: No further questions.
3	THE COURT: All right.
4	Mr. Katz. I want to make clear before you
5	start, Mr. Katz, that I am not going to allow you to go
6	over ground that Mr. Gross has gone over. You may, if you
7	want to, explore further in the area, but you are not going
8	over the same ground.
9	MR. KATZ: Your Honor, I except to your ruling.
10	THE COURT: You don't have to except to it.
11	The ruling is there and you abide by it.
12	Now continue.
13	CROSS EXAMINATION
14	BY MR. KATZ:
15	Q Miss Durr, I take you back to September 22nd, 1975
16	about ten o'clock at night. Where were you at that time?
17	A In the vicinity of the Skyline Motor Inn.
18	Q And when you got to the Skyline Motor Inn, I
19	believe it is your testimony, the testimony of the Government
20	so far here, that you went to room 246, is that right?
21	A I don't know.
22	
23	
24	

		A127
1	mblt 1	Durr-cross 230
2	O.	But you went to a room?
3	A	Yes.
4	ΰ	And at that room, Mr. Ricks, I understand,
5	knocked	at the door; is that right?
6	A	Yes.
7	Q	And that door was answered by John Miller?
8	Λ	Yes. ·
9	Ω	Was there a chain on that door?
10	Λ	Yes.
11	Ω	And Mr. Miller opened that door?
12	A	Yes.
13	Ω	And when Mr. Miller opened that door, did he
14	have any	ything in his hand?
15	A	No.
16	Ω	Did you see a gun in the vicinity of Mr. Miller?
17	A	No.
18	ő	11d you see a person that you know now as
19	Heather	Campbell?
20	A	Could you repeat the question again?
21	Ω	Did you see a person that you now know as
22	Heather	Campbell?
23	A	Yes.
24	Ů,	Where was Miss Campbell seated?

e 7 a.m.

On the bed.

1	mblt	Durr-cross	231
2	Ω	And can you describe how she	was dressed?
3	Α	She had on a dress.	
4	Q	Was she completely clothed?	
5	Λ	Yes.	
6	Q	Now, Miss Durr, in that room,	did you take two
7	plastic bag	s out of your handbag?	
8	A	No.	
9	Q	When did you take the two plan	stic bags out of
10	you~ handba	g?	
11	A	Herbie took them out.	
12	Q	But they were in your handba	in that room;
13	is that rig	ht?	
14	A	Yes.	
15	Q	What did Herbie do with them	when he took them
16	out?		
17	Λ	He put them on the dresser.	
18	Q	Miss Durr, I show you a statement	ent previously
19	marked as I	Exhibit	
20		MR. KATZ: It's marked Exhibi	t 3504. Does it have
21	any other m	markings?	
22		MR. KAPLAN: That is the only	marking.
23		MR. KATZ: Fine.	
24	Ω	I ask you to read tothe Court	this paragraph
25	aloud and o	elear.	

25

is --

mblt Durr-cross

232

MR. KAPLAN: Objection, your Honor.

THE COURT: The objection is sustained. She does not have to read anything. You ask her to read it and ask her a question about it.

MR. KATZ: All right.

Q Will you read this paragraph --

THE COURT: To yourself.

MR. KAPLAN: What paragraph is Mr. Katz referring

to?

MR. KATZ: I am referring to the paragraph -- it starts off--

THE COURT: Keep your roice down, Mr. Katz.

MR. KATZ: "We then arrived at the Skyline Motor

Inn."

MR. KAPLAN: That's sufficient.

THE COURT: All right.

(Pause.)

THE COURT: Have you sufficiently read it?

THE WITNESS: Yes.

Q llave you digested it?

Will you tell the Court what if nything in that paragraph is untrue?

THE COURT: Without an objection, that question

1	mblt	Durr-cross	233
2		MR. KATZ: All right.	
3		THE COURT: Withdrawn.	
4	Q	By the way, is this paragraph true?	Did you
5	initial it,	and is it true?	
6	A	No.	
7	Q	Now will you tell the Court in what	respect that
8	paragraph is	s untrue?	
9		THE COURT: I don't see any point to	that. If
10	your purpose	e is to show that it is inconsistent	with something
11	she has ind	icated here, then focus a question and	d bring it
12	out.		
13	Ω	Have you testified here to the fact	that Herbie
14	took		
15		THE COURT: Well, no, just ask her a	question
16	about it.		
17	Ω	Does this paragraph read to the effe	ct that
18	Herbie took	two plastic bags from his pants? Yes	s or no,
19	Miss Durr?		
20	A	No.	
21	Ω	That is not a true statement, is it?	
22	Λ	No.	
23	Ü	Did you ever make that statement aga	in after you
24	signed that	statoment?	

No.

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234

O I show you your plea, marked 3508, and I ask
you to read page 8, this plea being taken before Judge Carter.
on November 19th.

MR. KAPLAN: What line are you referring to,

6 Mr. Katz?

MR. KATZ: I ask her to read from line 3 through

8 line 6.

THE COURT: May I see that, please?

MR. KATZ: Yes, your Honor.

THE COURT: No, let her read that. Let me see a copy of it.

(Document handed to the Court.)

THE COURT: Page 8?

MR. KATZ: Sorry, your Honor.

THE COURT: Page 8 is what you're talking

about?

MR. KATZ: Page 8, line 3 to line 6, your Honor.

Q Now, I ask you, Miss Durr, have you had sufficient time to read and digest the statement?

MR. KATZ: Will the Court now allow me to have her read the statement?

have her read the statement because it is very clear to me that there is nothing in that statement that inconsistent with

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1	mblt Durr-cross 235
2	Miss Durr's testimony here.
3	MR. KATZ: Your Honor, I make the following
4	offer of
5	THE COURT: The point is that I have now
6	ruled and please do not argue with me. She does not have
7	to answer that question. There is no inconsistency.
8	Now, you have your exception and move on, please.
9	Q Is it true that you continuously lied about wheth
10	or not you carried that into the room in your handbag?
11	A No.
12	Q You have never said that Herbie had it in his
13	pants, is that what you want us to believe?
14	A On what occasion?
15	O Miss Durr, you have made so many statement that
16	I can't help you on that score.
17	THE COURT: Mr. Kat/z
18	MR. KATZ: Yes.
19	THE COURT: You are not testifying, you know.
20	If you want to testify, we will swear you in and put you on
21	the witness stand. Your purpose is to ask questions, not to
22	make statements.
23	Q All right, Miss Durr, you tell us, when did you

tell the truth about it being in your bag?

lie about the cocaine being in Herbie's pants and when did you

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brought out the fact she made a statement it was in her bag which is inconsistent with her statement here. Now, let's go on.

We will take five minutes. A tive-minute recess.

(Jury left the courtroom.)

MR. KAPLAN: May the record reflect that Mr.

Katz has handed me a copy of the affidavit or Jewelean Durr

which was contained in his riles and a copy of which I

provided to him as Government's Exhibit 3507 for identification.

I am now marking the copy which Mr. Katz has given me as Government's Exhibit 3507 for identification, and I am stapling the two pages or the aftidavit together.

MR. KATZ. And Mr. Kaplan may I be able to use this as an original?

MR. KAPLAN: Yes.

(In open court - jury present.)

MR. KATZ: May I proceed, your Honor?

THE COURT: Yes.

BY MR. KATY:

On the night of September 22, 1975, about what time did you and the DEA agents leave the premises of 246?

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Do you remember what time you were advised of your rights that night? MR. KAPLAN: Objection, your HOnor.

THE COURT: Sustarhed.

Were you advised of your rights that night? Q MR. KAPLAN: Objection.

THE COURT: Sustained.

Did you sign any document relative to making a statement that night?

> Yes. A

Is this a fair and accurate copy of that statement?

I ask the government to produce the original.

MR. KAPLAN: Is what a fair and accurate

statement?

MR. KATZ: It's marked as Exhibit 3503.

MR. KAPLAN: Your Honor, I object to this as

irrelevant.

THE COURT: Let me see it.

(Handed.)

MR. KATZ: I am laying the foundation for something, your Monor. If you want an offer of proof, I will make it.

THE COURT: Objection is sustained.

1	mblt	Durr-cross 238
2	Q	Did you sign the statement that I showed you
3	as 3504	
4		MR. KAPLAN: Objection, your Honor.
5		THE COURT: Sustained.
6	Q	willingly?
7		THE COURT: The objection is sustained.
8	Q	When you gave the statement marked as 3504, which
9	is the state	ement we previously showed you, did you do so of
10	your own fre	ee will?
11		MR. KAPLAN: Objection.
12		THE COURT: Sustained.
13		MR. KATZ: Your Honor, I have an offer of
14	proof.	
15		THE COURT: Sustained, sustained.
16		Proceed.
17		MR. KATZ: May I approach the side bar?
18		THE COURT: No, you may not.
19	Q	Do you remember signing a paper on the 30th day
20	of October,	1975 for Mr. Michelman?
21		Who is Mr. Michelman?
22	Λ	My attorney.
23	Q	I show you 3507. Will you please read it and
24	examine it?	
25		THE COURT: Let me see that, please.
		(Handed.)

1	mblt Durr-cross 239
2	THE COURT: I think I have
3	MR. KATZ: May we have that marked in evidence,
4	please?
5	THE COURT: I think I have already sustained an
6	objection to that, and I gather there will be an objection
7	since it is merely a continuation of the question I have
8	ruled out of order.
9	MR. KAPLAN: That's correct.
10	THE COURT: The objection is sustained, Mr. Katz
11	and do not persist.
12	MR. KATZ: Your Honor, may I understand this
13	THE COURT: The objection is sustained.
14	MR. KATZ: You are not going to let me use a
15	sworn affidavit before this Court?
16	THE COURT: The objection is sustained, Mr. Katz.
17	Q All right, Miss Durr. You did not go to
18	Figueroa's mother's house that night, did you, September 22,
19	did you?
20	A Yes.
21	Q You did?
22	Λ Yes.
23	Q Who was present?
24	A Herbie, Willie, his brother, and myself.
25	Q Did anything unusual happen to the car on

			1
			A137
1	mblt	Durr-cross	240
2	September	22nd? Herbie's car?	
3	A	I don't remember.	
4	Q	Did Herbie ever tell you about a	nything happening?
5	A	I don't remember.	
6	Q	Do you remember a flat tire?	
7	A	I don't remember.	
8	Q	Prior to the time that you spoke	with Mr. Kaplan,
9	did you sp	eak to any other U.S. Attorney?	
10	A	Yes.	
11	Q	Who was that?	
12	A	Mr. Engel.	
13	Q	Did you give Mr. Engel a statemen	ne?
14		MR. KAPLAN: Objection, your Hono	or. Did they
15	specify a	time and place for this conversation	on?
16	Q	September 22nd, some time prior	to the noon hour.
17		Did you make a statement to Mr. H	Engel?
18	A	Yes.	
19	Q	What did you tell Mr. Engel?	
20		THE COURT: What is the	
21		(Mr. Kaplan handed a paper to the	Court.)

THE COURT: I am not going to allow you to make a blanket statement about what she told somebody outside of court. You know how you can use those statement, the purpose for which you can ask about them.

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1	mblt	Durr-cross .	241
2		MR. KATZ: All right.	
3	Q	Subsequent to the time that you sp	oke to Mr.
4	Engel, and	not counting Mr. Michelman, when wa	s the next
5	time you ga	ve somebody a statement representing	g the govern-
6	ment?		
7	A	I don't understand the question.	
8	Q	All right.	
9		When was the next time after your	strike
10	that.		
11		You appeared before a magistrate of	n September 23,
12	did you?		
13	A	I don't remember.	
14		THE COURT: Did you talk to anybody	y in the
15	government	between the time you spoke to Mr. E	ngel and the tim
16	that you te	stified you spoke to Mr. Kaplan on	the 19th?
17		THE WITNESS: No.	
18		THE COURT: 19th of November.	
19	Q	You spoke to no DEA agents?	
20	A	No.	
21	Q	Any DEA agents attempt to contact	you?
22	λ	No.	
23	Q	Who was present at your meetings w	ith Mr. Kaplan?
24	A	His associate.	
05	0	Anybody else present?	

1	mblt	Du-r-cross 242
2	Q	Anybody else present?
3	A	No.
4	Q	At no time were you ever interviewed by a DEA
5	agent?	
6	A	No.
7	Q	Tell me, Miss Durr, what happened at McDonald's
8	on Septembe	r 22nd?
9	A	I don't know.
10	Q	Were you there?
11	A	No.
12	Q	Mr. Ricks ever tell you anything about McDonald's?
13	A	No.
14	Q	Prior to the time you met Mr. Ricks, didyou ever
15	use cocaine	9?
16		THE COURT: She had already testified I'm sorry
17	go ahead.	
18	Q	Did you ever traffic in cocaine prior to that
19	time?	
20		THE COURT: What do you mean by that?
21	Q	Did you ever buy or sell it?
22	A	No.
23	Q	What was your relationship with Mr. Robinson?
24	A	Friends.
25	Q	How long have you be n friends?

1	mblt	Durr-cross 243
2	A	Since May of '75.
3	Q	How did you meet Mr. Robinson?
4		MR. KAPLAN: Objection.
5		THE COURT: Sustained.
6	0	Did you meet Mr. Robinson in the period between
7	1973 and 19	975?
8		MR. KAPLAN: Objection.
9		THE COURT: I think she said she met him in May,
10	1975.	
11	Q	Where did you meet Mr. Robinson for the first
12	time?	
13		MR. KAPLAN: Objection.
14		THE COURT: It is irrelevant. Sustained.
15	Q	Did you ever do any deals with Mr. Robincon?
16	A	No.
17	Q	By the way, when you went to the Saw Mill River
18	the second	time, did you carry the cocaine in your pocket-
19	book?	
20	A	No.
21	Q	Where did you carry the cocaine?
22	۸	I didn't.
23	Q	Who carried it?
24	A	Herbie.
25	Q	What did you carry?

1	mblt	Durr-cross/redirect 244
2	A	Nothing.
3	Q	Just went along for the ride?
4	λ	Yes.
5		MR. KATZ: No further questions, your HOnor.
6		THE COURT: Any redirect?
7		MR. KAPLAN: Yes, your Honor.
8	REDIRECT EXA	MINATION
9	BY MR. KAPLA	N:
10	Q	Miss Durr, I show you Government's Exhibit 3504
11	and I ask yo	ou to look at it.
12		THE COURT: What is that?
13		MR. KAPLAN: Your Honor?
14		THE COURT: Let me see it.
15		(Document handed to the Court.)
16		(Pause.)
17	Q	Have you looked at it?
18	A	Yes.
19	Q	Is everything that you know about this case in
20	that paper?	
21	A	No.
22	c	Is everything in that paper true?
23	A	Yes.
24	Q	Prior to giving this statement, did you speak
25	with anyone	else?

1	jglt	Le	evine-re	ecross		265	5
2	Q	Would you	recall	the exact	time when	the a	irrest
3	was made?						
4	A	No, I cann	ot reca	all the exa	act time.		
5	Q	To the bes	t of yo	our recolle	ection, cou	ald th	ie
6	arrest have	been made	about 9	9:55 p.m.?			
7	. А	It could h	ave bee	en.			
8		MR. GROSS:	No fu	rther ques	stions.		
9		THE COURT:	All r	ight. Tha	ank you, Mr	. Lev	ine.
10		(Witness e	xcused.	)			
11		THE COURT:	Call	your next	witness, N	ir. Ka	plan.
12		MR. KAPLAN	: Jay	Silvestro.			
13	JAY	SILVES	TRO,	call	led as a wi	tness	ı
14	on be	half of the	govern	ment, beir	ng first du	ly sw	orn,
15	testi	fied as fol	lows:				
16	DIRECT EXAM	INATION					
17	BY MR. KAPL	AN:					
18	Q	Mr. Silves	tro, ho	w are you	employed?		
19	A	I am a Spe	cial Ag	ent with t	he United	State	s
20	Department of	of Justice,	Drug E	nforcement	Administr	ation	
21	Q	For how lo	ng have	you been	so employe	d?	
22	Α	Since that	agency	's incepti	on in July	of 1	973.
23	Q	Before tha	t, how	were you e	mployed?		
24	Α	I was a Sp	ecial A	gent with	the United	Stat	es
25	Department of	of the Trea	sury, B	ureau of C	ustoms.		

1	jglt Silvestro-direct 266
2	Q On September 22, 1975, were you on duty?
3	A Yes, sir, I was.
4	Q What was your assignment on that date?
5	A I was involved in a surveillance of a case which
6	was handled by Special Agent Thomas Dolan.
7	Q At about 2:30 p.m., where were you?
8	A At 2:30 o.m. I was across the street from a
9	bar called Martell's in New York City, Manhattan, and I was
10	there on a surveillance. We initially had been told that
11	there was going to be a meet between an informant and a
12	person who was to me an unidentified black male whom we
13	suspected was going to arrive in a blue Volvo.
14	At about 2:30 I observed a young black couple
15	exit Martell's, where there was supposed to be a meeting goin
16	on, and I watched them go north, walk north of Martell's.
17	And my curiosity was aroused. I crossed the
18	street and began to walk over to where they were going and
19	watched them get in a long, black Cadillac. None of the
20	other agents were around, so I thought it was necessary that
21	I get across the street and see who they were and where they
22	were going.
23	I watched them get into the car. The car started
24	up, pulled out, went up and made a right and was going east.
25	I ran down the block and got the license number

.	A144
1	jglt Silvestro-direct 267
2	from the car and then it left the scene.
3	Q At about what time was that?
4	A This was around 2:30 == between 2:30 and 3 o'cloc
5	I would say. I could not tell you exactly what time it was.
6	Q Was the license plate number on that car
7	checked?
8	A Yes, it was.
9	Q And after that, what did you do on that day?
10	A The license number of the car, which I do not
11	recall, came back to a Veronica Branch, and it was 717
12	something, I think it was Tockaway Parkway, or something
13	like that. I know it was 717.
14	And myself and Special Agent Emilio Garcia rode
15	out there to Brooklyn, to the address, and we did in fact see
16	the Cadillac in the driveway in front of that house.
17	Q Now, shortly after 5 p.m. on that day, did you
18	observe anything?
19	MR. KATZ: Your Honor, I am going to object to
20	this line of questioning . I would like a side bar to
21	state my objection.
22	THE COURT: Where are we now, Mr. Kaplan? Where
23	are we now?
24	MR. KAPLAN: Outside of 717 Rockaway Parkway.
25	THE COURT: What address is that? Is that the

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address that has been given to us? I don't recall.

MR. KAPLAN: That's correct.

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THE COURT: Well, the objection is overruled.

MR. KATZ: Your HOnor, my objection --

THE COURT: The objection is overruled.

MR. KATZ: I understand that, but I have a further objection, your Honor. I believe that this witness has now testified that through some sort of alchemy, because he did not know or didn't identify either of the defendants, either Durr or Ricks, he had knowledge of them --

THE COUF . I've had enough. You have made your objection and the objection is overruled. As I understand it, he is now stationed outside the house, or the testimony shows that Miss Durr and Mr. Ricks --

MR. KATZ: But he had no cause to follow them,

THE COURT: The objection is overruled. Proceed.

Q Shortly after 5 o'clock on September 22nd, did you observe anything?

A I would say some time between 5 and 5:30 I observed the same young man whom I had seen get into the Cadillac in front of -- up from Martell's come out of the Cuilding, get into the Cadillac and make a U turn and go

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The man opened the trunk of the car and fooled around in it for a while. It looked like he was either cleaning it or doing something with his spare tire. I don't know.

He then got back into the car, and myself and Special Agent Garcia in one vehicle, in the same car, followed the black Cadillac to the corner of Schenck and Stanley Streets in Brooklyn.

I'm not intimately familiar with the streets of Brooklyn. I couldn't tell you exactly how we got there, but that is where we ended up.

There was a black Cadillac parked on Schenck, having taken a left off of Stanley.

We followed the vehicle. The vehicle pulled over. We went passed it. It was a housing project area, a largely black and Hispanic area. I remained in the government car.

> SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

Agent Garcia got out on foot.

Q And did you observe anything at that time?

A I observed, at considerable distance I would have to say, another vehicle pull up, I think it was a blue Ford, a blue Ford Motor Company type product, and there was apparently some sort of conference. I was a great deal away, distance away. I couldn't testify any further as to what happened.

A short time afterthat the black Cadillac began to move again. Special Agent Garcia got back in the car and we followed the car back to 717 Rockaway Boulevard, or Parkway, whatever it was.

Q What happened after that?

A The driver of the car exited the vehicle, went back into the house. I would say that the car got back to the house at about 6:10 -- having arrived at Schenck and Stanley about 6:45.

Q It got back to the house at 6:10 having arrived --

A It was at Schenck and Stanley at 5:45, excuse me, and was back at the house by about 6:10.

At about 6:30 a woman, a young woman, got into the car, drove up to the corner to a grocery store, apparently did some shopping, spent some time there, and then went back

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to the house.

At about -- there was no movement for some time. At about 7:30 the Cadillac moved again and went to a McDonald's hamburger restaurant on-- I believe it was Pennsylvania Avenue in Brooklyn.

Did you observe anything at that time?

Yes. The car parked in the back of the lot -the McDonald's there has the kind of lot that you could drive in the front and drive out onto another street out in the back, and there is a parking area behind the McDonald's.

The Cadillac pulled into the back part of the McDonald's parking lot and stopped. The driver got out and he met with a young Hispanic man.

Do you see that man in court today?

I saw the man at this point free distance and I could not identify him at that time.

They walked up Pennsylvania Avenue, passed the McDonald's, made a right. They went down a short block and walked down the street behind the McDonald's, which was completely unlighted at the time, it was very, very dark, and they got into -- or stood by and then got into -- a light green what at the time I described as a rental-looking kind of car. It was a shiny, clean Chrysler product, like a midsize Chrysler. And they spent some time there and the car

moved off.

We didn't follow the car. We did not get near the car because it was in the middle of a very dark street.

The agents went back and we decided we would set up on the Cadillac, figuring that when the driver of the Cadillac came back we would know they were back.

By the time we got our plans together and got set up, we looked back in the lot and, in fact myself and another agent walked over to the McDonald's, and the car was gone, the Cadillac had been moved.

At this point we had lost contact completely with the Cadillac. So all the other surveillance agents went back into Manhattan. Special Agent Garcia and myself got back in our car and decided to drive around and see if we could find the Cadillac.

Well, we went back to 717 Rockaway Parkway, or Boulevard whichever, and the car was double parked in front of the place. We set up on it and it drove off with two occupants in it.

We followed the car. The car went back like it was going to the McDonzld's, only instead of going in it went up in the residential section behind the McDonald's and did what we call on the job "did the block;" it started riding around, making turns and making turns without signaling.

We followed them for a while and then it became obvious, or it seemed obvious in my experience, that they were looking to see if they were going to be followed. So we just dropped off.

MR. KATZ: Objection, your Honor.

THE COURT: The objection is sustained.

Just tell us what you did, Mr. Silvestro.

A (Continuing) We dropped off the car, and myself and Agent Garcia went back to Manhattan.

Where did you go in Manhattan?

A We went to 49th and 10th, which is on the southwest corner of the street, where on the northwest corner of the street there is the Skyline Motor Inn, where the deal was set to go down. We had agents in the room there and the other agents that had previously gone to Manhattan were stationed strategically around the place.

I let Special Agent Garcia out of the car and he went into the hotel. While I was waiting for him to return,

I parked -- I stopped; I didn't park; I had my lights on and the motor running -- on the southwest corner of 49th and 10th, on 10th facing north.

While I was waiting for him to come back, a very short time after we got there, after we had gotten back to Manha-tan, maybe five or ten minutes at the most, the traffic

was going -- the traffic going westbound on 49th Street -it was going right in front of me, and here came the big
Cadillac with the same gentleman at the wheel, right in front
of my car, followed immediately by the light green Chrysler
product rental-looking car with the other gentleman in the
middle of the defense table, with the blue shirt on, at the
wheel.

MR. KAPLAN: May the record reflect that he has identified the defendant Figueroa?

THE COURT: All right.

Q And after you observed the car --

A I was sort of surprised see them, because nobody had picked them up.

THE COURT: Come, come, Mr. Silvestro. Just tell us the facts that you saw.

A (Continuing) I radioed to the other units that the cars we were looking for were here. And as soon as the light changed and the rest of the traffic cleared, I made the left on to 49th Street, to follow them.

Shortly after I made the corner, parked on the right hand side of the stree, which was the north side of the street, was the green car with that gentleman sitting behind the wheel, and as I rode down the street the Cadillac was on the left and there was no one in it that I could see

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at that time.

I went around the block, reporting that the cars were parked on the street, went back onto 10th Avenue and parked so that I was on 10th facing north, but south of 49th Street so that I could swing around the corner and again be behind the green car.

And while you were sitting there on that corner, did anything happen?

A While I was sitting there on the corner, a radio communication came from upstairs ordering us to hit the car, to arrest the man in the green car.

O And did you do anything at that point?

A I went around the corner. Another car was coming up 49th Street the wrong way to we could seal off the block, and the green car wasn't there.

I went down 49th Street the rest of the way, and the car that was coming up the wrong way, the green car came around the corner and they met head to head and they stopped the car.

MR. KAPLAN: No further questions.

THE COURT: I gather you stopped the car and arrested the defendant?

THE WITNESS: I did not arrest the defendant.

THE COURT: All right. Mr. Gross?

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Q Would you recall the first time that you saw the black Cadillac in the area of the Skyline Motor Inn?

A I couldn't tell you exactly, Mr. Gross. I would estimate thatit was somewhere in the vicinity of 9:30, some-

Could it have been later than 9:30?

I would say between 9:30 and 10, not later. 9:30 to a quarter to 10, somewhere around there. I would say that it is very, very sketchy.

Q Would you recall the time when you received instructions to take the car or whatever, with respect to the car, the light green Chrysler product? Do you recall what time you received those instructions?

A I would say that we are talking about a time span, the difference between the two, of about twenty minutes. That is, again, just a rough guess. I would say twenty minutes or so.

Q Would you know what time the arrest was made inside the Skyline Motor Inn?

No, sir, I don't, other than the fact of being there. I would assume that it was contemporaneous with the radio communique that I got.

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	Q	Wou	ıld	you	know	if	the	arrest	was	mad	e pri	or to
your	receiv	ing	in	stru	ctions	s w	ith	respect	to	tl:	light	greet
Chrys	sler ca	r?										

A That would have to be an assumption on my part.

I would assume that it happened, that I received the radio

communique after the arrest in the room, but there is no way

for me to know that.

MR. GROSS: No further questions.

## CROSS EXAMINATION

## BY MR. KATZ:

Q Agent, do you have with you any notes or writings that you prepared with reference to this case?

A I made no report, sir, in reference to the case.

Q You made no report?

A No, sir.

THE COURT: No written report.

THE WITNESS: No written reports, no.

Q Did you make any oral reports?

A 1 certainly informed the case agent and my supervisor and Mr. Kaplan of what I observed on those days or on this day.

Q When were those reports made, subsequent to the arrest?

A I immediately reported to my supervisor the

1	mblt Silvestro-cross 278
2	license number of the car on the afternoon of the 22nd.
3	Q I want to get this clear in my mind, Agent
4	MR. KAPLAN: Objection, your Honor.
5	THE COURT: All right, the objection is sustained
6	Q At the time that Mr. Ricks and Mrs. Durr first
7	came under your observation, did you know anything about
8	either of the two individuals from any information you had
9	received from the DEA?
10	A No, sir.
11	Q The only reason you followed these two individua
12	was because they were black, getting into a Cadillac, is
13	that right?
14	A No, sir, that is not correct.
15	MR. KAPLAN: Objection.
16	THE COURT: The objection is overruled. He
17	answered it anyway.
18	MR. KATZ: May I have the answer?
19	THE WITNESS: No, sir, that's not why I
20	followed them.
21	Q Do you want to tell this Court why you followed
22	them?
23	A Because
24	THE COURT: I think he has told us why he
05	followed them in his vehicle. If you want to ask him a

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question about it, ask him. He's told you why he followed them in his direct examination.

MR. KATZ: He said mere suspicion.

THE COURT: Ask him a question, Mr. Katz.

Did you follow them because of mere suspicion?

I followed them because we were looking or we were supposed to be there to follow a black man who was having a meeting in Martell's. Mr. Ricks is a black man, he came out of Martell's, and I followed him to his car.

Do you know of how many black people there were in Martell's at the time?

I have absolutely no idea.

Do you think there would have been more than Mr. Ricks?

I could not guess.

Did you take any steps to find out whether or not the person that you were following was the people that were wanted by DEA other than to check the license number? THE COURT: I think -- you know, I think all this is really irrelevant, besides the point, in terms of this case. I don't think it has anything to do with the issues that have been raised before us at the present time.

Did you ever speak to Mr. Miller prior to the time that you made your first observation of Mr. Ricks?

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A	No,	sir.

- O Did you ever speak to any agent about Mr. Miller prior to the time you made your observation of Mr. Ricks?
- A I didn't know who Mr. Miller was until some time after this.
  - O After the arrest, until after the arrest?
- A No, until after the meeting at Martell's.
- I don't believe I had seen him before that.
  - Q About what time did you find out about Mr. Miller?
  - A About --
- THE COURT: I don't really see where all this is loading and it certainly has not anything to do with this case in regard to this man's testimony.
  - MR. KATZ: Your Honor, are you cutting me off?
- THE COURT: Yes, I am.
  - MR. KATZ: All right.
- Exception.
- 19 I have nothing further.
- 20 THE COURT: Thank you very much, Mr. Silvestro.
- 21 You may step down.
  - Call your next witness.
- 23 (Witness excused.)
  - MR. KAPLAN: Emilio Garcia.

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Garcia-direct	284
LAN: Í offer Government's Exhib	oit 9
into evidence.	
Z: Voir dire.	
ОИ	
have a key to Mr. Ricks' car?	
LAN: Objection.	
RT: The objection is sustained.	
have Mr. Ricks' consent to go i	nto his
RT: Objection sustained.	
Z: I renew my motion again, you	r Honor.
RT: You know this is really Mr.	Kotz, a
ave already denied it. I don't	see what
continuing to press it. You are	not
Z: Your HOnor, it is a Constitu	tional
e to break into a car without	
LAN: Objection:	
RT: You are not gaining anythin	g at all
ng. Your record is protected.	
oceed in an orderly fashion.	
2: All right, your Honor.	
t to the exhibit.	
RT: The objection is overruled.	
	t to the exhibit. RT: The objection is overruled.

## AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK, COUNTY OF RICHMOND 95.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 10 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. , 19 7 Gal 10302. That on the '8 day of March. deponent served No. 1 St. Andrews Pl., NYC the within Appendix upon . U.S. Atty., So. Dist. of N.Y. herein, by delivering a true the Appellee copy thereof to personally. Deponent knew the person so served to be the person mentioned and described in said papers therein. Appellee as the

Sworn to before me, this 8 day of March 19 76

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WILLIAM BAILEY

Notary P blic, State of New York

No. 43-0182945

Qualified in Richmond County

Commission Expires March 50, 1976